

## **ORDINANCE NO. 2011-2 EFFECTIVELY AMENDING BY REPEALING AND DELETING LANGUAGE THEREIN FROM ORDINANCE NO. 2006-1**

### **AN ORDINANCE REGULATING THE CONTROL OF ANIMALS. THE VACCINATION OF ANIMALS, THE IMPOUNDING OF ANIMALS, THE POSSESSION OF ANIMALS, AND PROVIDING FOR VIOLATIONS AND RELATED ISSUES THEREOF**

WHEREAS, it is the duty of every owner of any animal, or anyone having any animal in his or her possession or custody, to provide the animal with appropriate humane living conditions and adequate veterinary care. It is also the duty of every owner, possessor, or custodian of animals to exercise reasonable care and to take all necessary steps and precautions to protect other people, property, and animals from injuries or damage which might result from their animal's behavior, regardless of the motivation or intent of said animal and regardless of whether such behavior is motivated by mischievousness, playfulness, or ferocity. In the event the owner, keeper, or possessor of animals is a minor, the parent, guardian, or custodian of such minor will be responsible to ensure that all provisions of this ordinance are complied with and for any penalties or violations. All persons who own or possess animals within the city limits of the City of Houston do so according to the terms and conditions of this ordinance and all rights of such persons are predicated upon compliance with this and any other applicable ordinances.

BE IT ORDAINED BY THE MAYOR AND BOARD OF ALDERMEN OF THE CITY OF HOUSTON, MISSISSIPPI, AS FOLLOWS:

#### Section 1. Definitions

- a) The term 'animal' whenever used in this ordinance shall be held to apply to both male and female animals and without regard to age or size.
- b) Any person over the age of eighteen (18) years who shall harbor or permit an animal for ten (10) days or more or let the same habitually remain to be fed for a period of ten days or more in or about his/her house, store, or other location shall be deemed The 'owner, possessor or custodian' of said animal, and shall be liable under this ordinance. Any person under age under eighteen years (18) in possession of an animal shall have his or her guardian, parent, or custodian stand fully responsible for his or her compliance with this ordinance as the 'owner, possessor or custodian' of said animal and any penalties for non-compliance.
- c) Any animal shall be deemed to be 'running at large' if it is at any time off the premises of its owner, possessor, or custodian, and It shall not be sufficient that said animal is trained to obey the commands of its owner, possessor, or custodian; or that it is momentarily or accidentally off the premises of the owner, possessor, or custodian, or that said owner, possessor, or custodian is not aware that said animal was off his or her premises or that said animal is very young or known to be harmless except that said animal shall not be deemed "running at large" if be controlled as follows at all times while off the premises of the owner, possessor, or custodian as follows:
  1. If enclosed in an adequately ventilated cage, pen, vehicle, trailer, or other enclosure suitable to prevent escape of said animal and of sufficient size as not to be overcrowded:
  2. if chained or tied to a leash not to exceed six (8) feet in length and having sufficient strength to restrain said animal with said leash being securely of an object of sufficient rigidity that It

- cannot be moved by said animal, or leash being securely held by a person who is capable of controlling and restraining said animal;
3. if said animal is bodily carried by a person who is capable of controlling and restraining said animal;
  4. An animal is not 'running at large' if under voice control as direct control when the animal is actually participating in organized group training or is in an official showing, obedience, or field event.
- d) Abused animal means any animal which is any of the following:
1. mistreated, beaten, tormented or teased whether resulting in death or not,
  2. deprived of water, food or shelter,
  3. kept under unsanitary conditions,
  4. abandoned,
  5. trained, bred, or sold for fighting other animals,
  6. transported unrestrained in open air vehicles,
  7. transported in the trunk of any vehicle,
  8. left unattended in a vehicle in extreme heat without proper ventilation,
  9. is overcrowded in its habitat such as, but not limited to, too many dogs in one yard.
- e) Dangerous Animals: the following animals are hereby found and determined to be dangerous animals and such are subject to all requirements and provisions of this ordinance and more particular restraints on dangerous animals:
1. Any animals, other than domestic dogs and cats, which in a wild state are carnivorous or poisonous or which, due to their physical makeup or capabilities, are capable of inflicting serious physical harm or death to human beings. This includes, but is not limited to, animals belonging to the cat or snake family including all constrictors, bears, wolverines, bobcats, badgers, lions, tigers and such other animals as the Mayor and Board of Aldermen may from time to time determine by resolution to be vicious animals.
  2. Any domestic dog or cat or any other animal that exhibits any of the following characteristics:
    - a) Without provocation, approaches in a threatening or terrorizing manner any person in an apparent attack or exhibits any behavior that constitutes a physical threat of bodily harm to a person upon the streets, sidewalks, any public or common grounds or places or in any other place where such person is conducting himself or herself peaceably and lawfully;
    - b) Without provocation, bites, inflicts injury, assaults or otherwise attacks a person in any place where such person is conducting himself or herself peaceably and lawfully whether on public or private property, or attacks another animal when such animal is not on the property of the owner, possessor, or custodian of the attacking animal;
    - c) A known propensity, tendency or disposition to attack without provocation, to cause injury to or otherwise endanger the safety of human beings or their domestic animals;
    - d) Owned or harbored primarily, or in part, for the purpose of fighting or any animal trained for fighting or being sold, bred, or maintained as a fighting animal.
  3. For the purposes of the ordinance, a person shall be considered to be peaceably and lawfully upon the private property of an owner, possessor, or custodian of an animal when he or she is on such property in the performance of any duty imposed upon him or her by any laws or postal regulations of the United States, or the State of Mississippi, or any political subdivision thereof or when he or she is on such property upon invitation expressed or implied, by law or by the owner, possessor, or custodian of said animal or of said premises.

4. The provisions of this ordinance notwithstanding, no animal may be determined to be dangerous due to the fact that it:
  - a) Inflicts injury or damage on a person committing a trespass or other tort upon the person or premises occupied by the person owning, or in possession, or in custody of the animal, or teasing, tormenting, abusing or assaulting the animal, or committing or attempting to commit a crime or ordinance violation.
  - b) Inflicts injury or damage on another domestic animal that is or was teasing, tormenting, abusing or assaulting the animal or its young.
  - c) Takes any action to defend or protect a human being within the immediate vicinity of the animal from an unjustified attack or assault.
5. Unless specifically stated to the contrary, the following are exempt from the definition of Dangerous Animals:
  - a) Dogs or other animal assisting a peace officer or other law enforcement engaged in law enforcement duties; and
  - b) Animals in a licensed veterinary, animal or small animal hospital for treatment, or kept in a bona fide educational, medical or other research institution, or in zoos, museums or similar places where such animals are kept as live exhibits or for study.

## Section 2. Restrictions on owning, harboring or keeping any animal.

It shall be unlawful for any person to own, harbor, possess or keep any animal within the corporate limits or the City of Houston, Mississippi, except in compliance with the provisions of the ordinance and the following specific provisions:

- a) All dogs and cats within the city above three (3) months of age shall be vaccinated for rabies. An additional vaccination is to be administered at fifteen (15) months of age and subsequently thereafter in compliance with Mississippi state law. Dogs and cats shall wear, at all times, a tag provided by the vaccinating veterinarian indicating such vaccination. All animals shall be vaccinated as required by the Mississippi State Board of Health and this ordinance shall automatically conform with and to any changes in required vaccinations of all animals by said State Department of Health and/or state law as may subsequently change from time to time.
- b) It shall be the duty of every owner of any animal, or anyone having possession or custody of any animal, to ensure that the animal is kept under restraint and that reasonable care and precautions are taken to prevent the animal from leaving, while unattended, the properly limits of its owner, possessor or custodian, and to ensure that:
  1. the animal is securely and humanely enclosed within a house, building, fence, pen or other enclosure out of which it cannot climb, dig, jump or otherwise escape on its own. Such enclosure must be securely locked at any time the animal is left unattended;
  2. the animal is on a leash, as defined in Section 1, and under the control of a competent person, and that person is present with the animal any time it is not restrained while on the owner's property.
  3. No animal shall be tethered in public areas and must be on a leash in public areas even when with owner.

## Section 3. Health and safety; noisy and nuisance animals prohibited

- a) It shall be unlawful for any person to intentionally administer or cause to be administered poison of any kind to any animal in any manner intentionally injure, maim or destroy any animal, or place any poison where it may be accessible to any animal; provided, however, any

police, law enforcement, or humane officer, in the performance of his or her duties may, if necessary, in order to catch an animal for the purpose of impounding it or subdue such animal, use such force and means as are necessary at the time in the sole and exclusive judgment of the described enforcement officer or officers. Necessary or common practices including, but not limited to, cropping of ears and docking of tails, are not considered maiming when performed by a licensed veterinarian.

- b) Any owner, possessor, or harbinger of an animal within the city which is kept in a pen, structure, building or other enclosure is hereby required to keep such enclosure in a sanitary and clean condition so as to prevent disagreeable odors from arising therefrom, and to prevent the presence or breeding of flies, mosquitoes and other pests therein and for the health of said animal. The animal shall, at all times, be provided with adequate shelter and protection from the elements, including harsh sunlight. The enclosure shall be provided the animal adequate exercise room, light, and ventilation and will not be overcrowded. The animal shall be provided a diet adequate in quantity and nutrition and at all times have free access to clean drinking water.
- c) It shall be unlawful for any owner, possessor, or keeper of any animal to permit such animal' or animals, by loud and persistent habitual barking, howling, yelping, or other loud sounds to disturb any person or neighborhood, and the same is hereby declared to be a public nuisance. It shall not be necessary, for the purposes of the section, to identify and describe the particular animal which is barking, howling, yelping, or making other such sounds, provided only that it shall be shown who has possession, care, custody or control of said animal or the premises where said animal is located or found be identified.
- d) The number of dogs kept in all pens and other enclosed areas shall not be large enough to interfere with the proper employment of nearby property or to create a material annoyance, disturbance or discomfort to adjoining property owners. Any dog or dogs, regardless of number or size which, due to excessive barking or howling, cause such an interference, annoyance, disturbance or discomfort, shall be deemed, upon inspection and verification by any police officer or other designated city official, to be in violation of this Section.
- e) Neither the number of dogs nor the manner in which they are kept shall be such as to create a public or private nuisance.
- f) It shall be unlawful for anyone to knowingly abandon or abuse any domesticated animal within the city. Each person who knowingly abandons or abuses, or willingly permits such abandonment or abuse, or aids in the abandonment or abuse of any domesticated animal shall be guilty of an offence.
- g) It is illegal to command or signal an animal or dangerous animal to attack a person or another animal. If this is done, the animal will immediately be declared dangerous if it has not been before. A verbal declaration by the enforcing officer will be all that is necessary to complete the declaration of dangerous animal. Impoundment will be immediate.
- h) It is a violation for the owner, possessor, or other person having control or custody of any animal to allow such animal to frequently or habitually snarl at, growl at, jump upon, or threaten persons upon sidewalks, roads, streets, alley, or public places or upon private property adjacent to that where the animal is contained. Such animals shall be declared a nuisance and its owner, possessor, or custodian shall be held responsible. The animal may be impounded and may thereafter be dealt with under the dangerous animal provisions.

#### Section 4. Enforcement Responsibility

- a) The police department, law enforcement officers, and any other lawfully designated official or representative of the city shall have the primary duty and responsibility of enforcing the provisions of this article. Any officer of the police department, all other law enforcement officers, and any such designated official or representative is fully authorized and empowered to enforce any and all of the provisions hereof.
- b) Any official or representative of the city, lawfully designated to enforce the provisions of this article, shall have the power and authority to issue summons and citations returnable to the municipal court or to any other proper authority for violations of this ordinance. Such summons and citations shall have the same full force and effect as if issued by the police department of the city for other law enforcement purposes. The section on penalties also applies for purposes of enforcement responsibility.
- c) The police department or other designated official or representative of the city may develop and utilize such forms as may be required and necessary to implement this ordinance, exercise the police power of the city in ordinance enforcement, and actively enforce this ordinance.

#### Section 5. Posting of premises

- a) All premises upon which a dangerous animal is kept, possessed or harbored shall be posted with signs that are conspicuously visible to the public and legible from property, public or private, adjacent to such premises. Such signs or notices shall contain letters of not less than two (2) inches in height and a message sufficient to warn the general public of the presence of the dangerous animal. Such signs shall be placed at all locations where entry to the owner's property is common and expected and upon all enclosures within which dangerous animals are confined, including residences and other structures. A 'Beware of Dog (Animal) sign' is not a sufficient warning for the presence of a dangerous animal.
- b) The absence of any required signs shall be considered prima facie evidence of a violation of this section. Signs shall be constructed and maintained in a manner to withstand the elements.
- c) Notwithstanding any exemptions granted elsewhere in this ordinance, the requirements of this section shall apply to all duly authorized and lawfully operated dealers in animals within the city, any lawfully operated circus, carnival, performing act or similar functions and events of a temporary nature, and to any premises utilizing dogs or other animals lawfully for guard or other purposes.

#### Section 6. Confinement of Dangerous Animals

- a) All dangerous animals shall be kept confined within the residence or other permanent building or structure on the premises of the owner or other person in possession or control of such animals or within an enclosure as herein defined.
- b) All dangerous animals kept on the premises of the owner or person having possession or control of such animals, and not within the residence or other permanent building or structure, shall be confined within a fence or structure area of at least four (4) feet in height (or taller, as necessary to humanely or adequately contain the animal) forming a confined area sufficient to prevent the entry of young children and, effective in containing a dangerous animal. Such enclosure shall be securely closed and locked and equipped with secure sides as well as a top covering and bottom which shall be designed to prevent the animal from escaping the enclosure. The bottom of such enclosure shall be concrete and the sides and top shall be constructed of steel wire or other materials sufficient to prevent the animal from escaping the enclosure. The city reserves the exclusive unilateral right to issue more specific confinement requirements in specific instances

where enclosures prove to be or are likely to be, in the exclusive decision of the city, insufficient to prevent the escape of such animals or to prevent such animals from coming into contact with people adjacent to such enclosures.

- c) Such enclosure, fence or structure must be at least five (5) feet from a fenced property line of the owner or person in control or possession of such animals, provided that such enclosure, fence or structure is within a separately and totally enclosed fenced area.
- d) No dangerous animal shall be allowed outside of the residence or required enclosure, unless it is securely muzzled and restrained, with a chain having a minimum tensile strength of three hundred (300) pounds and not exceeding three (3) feet in length, and under the direct control and supervision of the owner, possessor, or custodian unless the owner, possessor, or custodian is a minor and then the dangerous animal shall not be allowed outside unless under the direct control and supervision of an owner or possessor, or custodian who is at least eighteen (18) years of age and sufficiently able to restrain said animal.
- e) In lieu of the requirement that the fence or structure area have a concrete bottom, the fence and sides of each structure area must be embedded in the ground to a depth of two (2) feet, provided such animal to be confined is not a burrowing animal, and if it is a burrowing animal the concrete bottom is required.
- f) No dangerous animals will be allowed to be kept within 100 yards of a school, daycare, or other facility which provides services to children.

Section 7. Determination of status, Impoundment; redemption or disposition of dangerous and other animals.

- a) Determination of dangerous animals is primarily a complaint-driven process and citizens are encouraged to contact the City of Houston Police Department or other enforcement officers concerning possible violation of the law. Any police officer or any other lawfully designated official or representative of the city shall have the right to enter any private property in the city for the purpose of inspecting said property for the presence of dangerous animals or for performance of other duties in the enforcement of this article. Any police officer or other lawfully designated official or member of law enforcement or representative of the city, having cause to believe that an animal is dangerous or abused, shall conduct or cause to be conducted an investigation of the animal and the owner, possessor or custodian shall have the opportunity to present evidence as to why the animal should not be determined to be dangerous or abused. The results of any investigation with respect to a particular animal shall not bar the city from investigating any subsequent actions of the animal.
- b) Should any police officer, member of law enforcement, or other designated official or representative of the city have reason to believe that an animal is vicious or dangerous and may pose a threat of imminent or serious harm to persons or other domestic animals or is abused, said officer or official may immediately seize and impound the animal pending an investigation as described herein. The decision of the enforcement official in seizing an animal prior to investigation shall be in the sole and exclusive judgment of the enforcing official subject to the then prompt post-seizure investigation and hearing.
- c) Any police officer or other lawfully designated official, member of law enforcement, or representative of the city, upon complaint by any citizen or person, on his or her own initiative, may make inquiries to determine compliance with this ordinance and may seize and impound any animal found in apparent violation of any of its provisions. The first offense is sufficient for impoundment and the animals will remain impounded until the situation resulting in charges is

- remedied. The animals may be returned upon correcting the deficiency and upon order of the municipal court. The offending party shall reimburse the city the costs of care while impounded.
- d) If any such animal is caused or permitted, or is found to be within the corporate limits of the city and in violation of the provisions of the ordinance, then such animal maybe apprehended and impounded by any police officer or other designated official(s) of the city or members of law enforcement, to be held or disposed of as herein provided for dangerous animals.
  - e) If any such animal is so impounded, the same shall be released to the documented owner, possessor, or custodian but only If payment is made, within five (5) working days to the city or as otherwise set by court order, of such sums as may be designated from time to time by the Mayor and Board of Aldermen or the court for compensation for catching or apprehending such animal and the expenses for harboring and caring for such animal on a daily basis during the time of impoundment. These expenses are due whether the owner elects to reclaim the animal or not.
  - f) In addition to or in lieu of impounding an animal found in violation of this article, any police officer or designated official(s) of the city or member of law enforcement may issue a citation for any violations of this ordinance to the person known to be the owner or be in possession or control of such animal. Any fines Imposed, as set from time to time by the Mayor and Board of Aldermen or otherwise by state law, shall be paid within three (3) working days of such citation or as set by the court. If such fine is not paid within the time prescribed, a criminal warrant maybe issued for such person, who may, upon conviction of such offence before the municipal court, be punished as allowed by law for violation of city ordinances,
  - g) All fees and fines imposed pursuant to this section shall be paid by any violator, and all other requirements of this article with respect to a dangerous animal shall be met before an animal Impounded pursuant to this article shall be released. If such fees and fines are not paid within five (5) working days or as set by the court, then any such animal so impounded may be destroyed or otherwise disposed of.
  - h) Appeals form orders of the Municipal Court shall be the same as other appeals from Municipal Court.

#### Section 8. Killing of dangerous animals; when authorized

When any dangerous animal, in the judgment of any police officer, member of law enforcement, or other designated official or representative of the city, poses a serious and immediate threat of serious harm or injury to human life, then it shall be the lawful duty of such officer to kill such animal, without requiring such officer to catch, restrain or Impound such animal or give any notice whatsoever in the sole and exclusive judgment of said officer.

#### Section 9. Penalties

- a) The failure or refusal of any person to comply with any of the provisions of this ordinance and the violation of any provision of this article by any person shall constitute a misdemeanor. Any person deemed guilty of any violation of any provision of this article shall, on conviction thereof, be subject to punishment allowed by law. The municipal court is hereby authorized to establish a schedule of penalties (to be no more than \$50 per offense) for various offenses or, in the absence of same, according to state law or other administrative order issued by the city and subject to review by the Mayor and Board of Aldermen.
- b) Issuance of a citation by the city which carries a fine due shall comply with the same time frames used by the municipal court for other violations or as determined appropriate by the municipal

court. Officers are encouraged to make suggestions as to how problems with fences or other containment can be remedied.

- c) If a particular animal or owner, possessor, or custodian is cited for violations more than three times, the animal containment must be brought to conform with the dangerous animal containment requirement. Second and third citations should carry incrementally larger fines as set by order of the city or by the court.
- d) If the non-conforming situation cannot be satisfactorily remedied immediately, then enforcement officers may impound the animal without prior notice. If this occurs, the animal will not be released to the owner, possessor, or custodian until proof is provided that the situation causing the citation has been satisfactorily remedied. The decision of whether the remedy is satisfactory will rest with enforcement officers and with the municipal court.

#### Section 10. Additional city remedies for violations

- a) Should any dangerous animal, when unprovoked, kill or wound or assist in killing or wounding any livestock, fowl or other domestic animal belonging to or in possession of any person, or attack, bite or otherwise assault or injure any human being or assist in doing so, whether out of or within any required enclosure of the owner or person in possession or control or whether on or off the property of the owner, possessor, or custodian, whether or not such animal is leashed or muzzled and whether or not such animal escaped without the fault of the owner, possessor, or custodian, then the owner, possessor, or custodian of the animal shall be liable to the person injured or aggrieved for all damages sustained to be recovered in a civil action together with costs of suit, attorney fees, and payment of medical expenses. It is rebuttably presumed that, as a matter of law, that the owning, keeping, possessing or harboring of a dangerous animal is in violation of this ordinance is a nuisance and a danger. It shall not be necessary, in order to sustain such action, to prove that the owner, possessor, or custodian of such dangerous animal knew that the animal possessed the propensity to cause such damage or that the animal had a dangerous nature.
- b) In addition to any damages awarded pursuant to this ordinance, a civil penalty of five thousand dollars (\$5,000.00) per incident or attack may be imposed by any court of competent Jurisdiction.
- c) Nothing in this ordinance shall be constructed so as to restrict any other remedies at law available to persons aggrieved by any attack of a vicious or dangerous animal, nor so as to prohibit criminal prosecution of persons owning or in possession of such animals as may be allowed by law.

#### Section 11. Repeal, Severability, Conflict, Effective Date, and Publication

- a) Repeal. The ordinance enacted by the Mayor and Board of Aldermen of the City of Houston, Mississippi, being adopted August 15, 1996, the same being Ordinance No. 1996-4, entitled "AN ORDINANCE REGULATING THE CONTROL OF DOGS; THE VACCINATION AND LICENSING OF DOGS AND THE IMPOUNDING OF DOGS; PROVIDING FOR VIOLATIONS THEREOF; ETC, of the City of Houston, Mississippi, is hereby repealed.
- b) Severability. Should any section, clause, paragraph, provision, or part of this ordinance for any reason be held invalid or unconstitutional by any court or competent Jurisdiction, this act shall not affect the validity of any other section, clause, paragraph, provision, or part of this ordinance. All provisions of this ordinance shall be considered separate provisions, and completely severable from all other portions.

- c) Conflict. In any case where a provision of this ordinance is found to be in conflict with a provision of any other ordinance or code of the City of Houston, Mississippi, existing on the effective date of the ordinance, the provisions of this ordinance shall take precedence.
- d) Effective Date. This ordinance shall take effect and be enforced from and after its passage in the manner provided by law, on and after the 16 of April, 2011.
- e) Publicity. The Municipal Clerk is instructed to publish a synopsis of this ordinance one time in the Chickasaw Journal/Times Post and to obtain proof of publication thereof.
- f)

SECTION 12: That this Ordinance shall take effect and be enforced as provided by law from and after publication thereof.

The foregoing Ordinance having been first reduced to writing, and adopted this 1st day of February, 2011.