

ORDINANCE NO. 432

**AN ORDINANCE AMENDING §242.05 OF ORDINANCE 242
GOVERNING THE OWNERSHIP AND CONTROL OF ANIMALS
IN THE CITY OF BARLING, ARKANSAS**

**BE IT ORDAINED AND ENACTED BY THE BOARD OF DIRECTORS
OF THE CITY OF BARLING, ARKANSAS, THAT:**

Ordinance 242 of 1997 is hereby amended as follows:

§242.05: DANGEROUS OR VICIOUS ANIMALS

SECTION 1: DEFINITIONS.

“Dangerous Animal” means any animal which displays or has a tendency, disposition or propensity to:

1. Bare its teeth or approach in a menacing manner a person or domestic animal that is not provoking the animal, or
2. Attack, chase, charge or bite a person or domestic animal in a menacing manner, or attempt to do so.

“Pen” shall mean an enclosure for domestic animals meeting the following requirements:

1. The minimum pen size shall be 4' x 6' or twenty-four (24) square feet for one animal under fifty (50) lbs. For animals over fifty (50) lbs., the minimum pen size shall be 5' x 10' or fifty (50) square feet.
2. In all pens, each animal housed therein shall have room to stand, lie down, turn around and sit normally away from its own waste; this requires a minimum of 4' x 6'. A pen 5' x 10' shall hold no more than one (1) large, or two (2) medium, or three (3) small breed animals.
3. All pens shall be a minimum of six (6) feet in height.
4. All pens surrounded on all sides and top by chain link fencing of at least No. 9 gauge, with steel ties, maximum 2.5 inch mesh, with concrete or similar flooring or with side fencing buried 18 inches into the ground, and with gates padlocked.

“Vicious animal” means any animal which has:

1. Caused a life-threatening injury, broken bone, caused multiple sutures, or any injury requiring medical attention to a person or domestic animal, without provocation, on public or private property; or
2. Killed a domestic animal, without provocation, on public or private property; or
3. Is owned or harbored primarily or in part of the purpose of fighting or is an animal trained for fighting.

SECTION 2: DETERMINATION AND APPEAL OF CLASSIFICATION.

- 1) Classification Procedure. The following procedure shall be followed for classifying an animal as vicious or dangerous:
 - a. Any duly authorized peace officer with jurisdiction within the City of Barling, Arkansas, or their duly authorized agent (hereinafter, OFFICER), shall be authorized initially to classify an animal as dangerous or vicious. The officer may find and declare an animal to be vicious or dangerous if the officer has probable cause to believe that the animal falls within the definition set forth in section 4-1. The finding must be based upon:
 1. The written complaint of a citizen who is willing to testify that the dog has acted in a manner which causes it to fall within the definition of Section 1; or
 2. A report filed with the officer; or
 3. Actions of the animal witnessed by the officer.
 - b. The classification of an animal as vicious or dangerous shall be in writing and shall be served on the owner or harborer by one of the following methods:
 1. Certified mail to the owner’s or harborer’s last known address; or
 2. Personally.
- 2) Appeal of determination. Any person who has received notice that his or her animal has been deemed vicious or dangerous may appeal such

decision to the City Administrator. The appeal must be in writing and made within five (5) business days of the day the notice was provided in accordance with this section.

- a. The City Administrator shall schedule and hold a hearing, within five (5) business days after receiving the written appeal, to review the initial classification. The City Administrator's decision shall be considered the final decision of the City as to whether the animal is vicious or dangerous.
 - b. If the initial classification is not appealed or if the right to appeal is waived, the initial classification shall be considered the final decision of the City as to whether the animal is vicious or dangerous.
 - c. An appeal from the decision of the City Administrator may only be made to a court of competent jurisdiction.
- 3) During the entire appeal process, it shall be unlawful for the owner or harbinger appealing the classification of vicious or dangerous to allow or permit the animal to:
- a. Be unconfined on the premises of the owner or harbinger; or
 - b. Go beyond the premises of the owner or harbinger unless such animal is securely leashed and humanely muzzled or otherwise securely restrained.
- 4) The officer may require temporary confinement of the animal pending the determination required in this section. If the owner or harbinger does not comply immediately with the temporary confinement requirements, the animal shall be impounded as provided in § 242.06 of Ordinance 242.

SECTION 3: ORDER OF COMPLIANCE AND LIABILITY COVERAGE.

- 1) No person shall own, possess or cause to be in the City any animal which the City Administrator has determined to be dangerous or vicious, unless it is restrained, confined or muzzled so that it cannot charge, attack, bite or cause injury to any person or domestic animal, and unless it is maintained at all times in compliance with any Order of Compliance issued under this Ordinance 242.
- 2) Upon determination that an animal is dangerous or vicious, the City Administrator shall issue an Order of Compliance requiring the owner or

harborer immediately to confine, muzzle and restrain the animal sufficiently to protect all persons and domestic animals, and otherwise to comply completely with the terms of this Ordinance 242. Full compliance with Ordinance 242 shall not exceed thirty (30) days from the date of issuance of the Order of Compliance.

- 3) The Order of Compliance may, in the reasonable discretion of the City Administrator, require that:
 - a. When outside of the walls of the owner's or harborer's home, the animal shall be confined in a pen as set forth in the definition of "pen" in Section 1 except when entering or exiting the pen.
 - b. It shall be unlawful for a vicious animal to be outside of a dwelling or enclosure unless it is necessary for the owner or harborer thereof to obtain veterinary care for the vicious animal or to sell or give away the vicious animal or to comply with commands or directions of the City Administrator or law enforcement with respect to the vicious animal. In such event, the vicious animal shall be securely muzzled and restrained with a chain leash not exceed four (4) feet in length, and shall be under the direct control and supervision of an individual capable of restraining and controlling the vicious animal.
 - c. The owner or harborer's home and the animal's pen shall be posted with firmly attached and prominently displayed signs warning the public that the animal is dangerous or vicious. These signs shall be furnished by the City of Barling and will be distributed upon payment of any license fee required to be paid pursuant to Ordinance 242.
 - d. The owner or harborer of a vicious animal shall provide proof upon request by the City Administrator or law enforcement officer of liability insurance in the amount of One Million Dollars (\$1,000,000.00) covering any harm done by the animal.
 - e. The owner or harborer of a vicious animal shall provide proof upon request by an animal warden or law enforcement officer that the dog has been spayed or neutered.
- 4) Upon a determination that animal:
 - a. Is a dangerous animal, the owner or harborer shall present the animal for photographing by law enforcement sufficient to identify the animal for City records and have a microchip identification

implanted by a licensed veterinarian or the Sebastian County Humane Society at the expense of the owner or harborer.

- b. Is a vicious animal, the owner or harborer shall present the animal for photographing by law enforcement sufficient to identify the animal for City records, and have a microchip identification implanted by a licensed veterinarian or the Sebastian County Humane Society at the expense of the owner or harborer.
- 5) By continuing to be an owner or harborer of an animal within the City which has been determined to be a dangerous or vicious animal, the owner or harborer shall be deemed to have given implied consent to reasonable inspections by law enforcement of the animal, of the premises where it is kept, and of documents evidencing any required liability insurance or other requirement of Ordinance 242.
 - 6) If the owner or harborer fails to meet fully law enforcement's requirements for temporary confinement and restraint, including any schedule of construction of pen or restraints, or fails to maintain full compliance with the Order of Compliance, law enforcement may seize and impound the animal, and may after five (5) business days, humanely destroy it, unless the owner or harborer has demonstrated full compliance with the requirements for temporary confinement and the Order of Compliance, in which case the animal may be returned after payment of all impoundment costs and fees.
 - 7) A determination that an animal is dangerous or vicious shall stand until law enforcement determines otherwise by written finding.

SECTION 4: LICENSURE, PENALTIES & AFFIRMATIVE DEFENSES.

- 1) No person shall be an owner or harborer of or cause to be in the City:
 - a. Any animal determined to be a dangerous animal by the City Administrator or law enforcement unless an annual special license fee of Two Hundred and Fifty (\$250.00) shall have been paid to the City; or
 - b. Any animal classified vicious by the City Administrator or law enforcement unless an annual special license fee of One Thousand Dollars (\$1,000.00) shall have been paid to the City. No such license shall be issued except upon proof of paid annual liability insurance in the amount of One Million Dollars (\$1,000,000.00) as required by this section.

- 2) The owner or harbinger of an animal in violation of any provision of this section shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by the assessment of a fine of not less than Five Hundred Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00).
- 3) If a complaint has been filed in a court of competent jurisdiction against the owner or harbinger of an impounded animal for violation of this section, it shall not be released except on the order of the court, which order may also direct the owner or harbinger to pay a fine and all impoundment fees. Upon finding that the animal is vicious, the court may order it to be euthanized in a humane manner. Surrender of an animal by the owner or harbinger thereof to law enforcement shall not render the owner or harbinger immune from the fines and fees of this section.
- 4) An owner or harbinger of a dangerous or vicious animal, who desires to transfer possession of the animal shall, at least three (3) days prior to the transfer, complete and return a notarized transfer form provided by law enforcement.
- 5) Any notice required under this article shall be deemed delivered:
 - a. Five (5) business days after being mailed, first class postage prepaid, to the residential or business address of the owner or harbinger;
 - b. Twenty-four (24) hours after being posted at the location where the animal is held, unless it is impounded by the City; or
 - c. Upon hand-delivery to the owner or harbinger.
- 6) It shall be an affirmative defense to prosecution under this section that the animal:
 - a. Is owned by a law enforcement agency and used for law enforcement purposes; or
 - b. Directed its behavior at a person who was committing a willful trespass or other tort upon the property of the owner; or
 - c. Directed its behavior at a person who was committing a violent offense to the owner or animal when off the owner's property, but under restraint; or

- d. At the time of its behavior was in custody of a veterinarian or animal shelter.

SECTION 3: EMERGENCY CLAUSE.

Because existing Ordinance 242 does not adequately address dangerous or vicious animals, and such animals present an immediate and clear danger to the residents and pets of residents within the City of Barling, it is hereby found and determined by the Board of Directors of the City of Barling, Arkansas that an emergency exists requiring regulation of dangerous and vicious animals. This Ordinance being necessary for the immediate preservation of the public health, safety and welfare shall be immediately effective as of the date of its adoption.

Passed and approved this 12th day of January 2016.



Mayor Jerry Barling

Attest:



Florene Brown, City Clerk

