

ORDINANCE # _____

**AN ORDINANCE REPEALING CITY OF AVA, MISSOURI CODE OF ORDINANCE
CHAPTER 10 ANIMALS AND REPLACING IT WITH A NEW CHAPTER 10 ANIMALS.**

- WHEREAS,** The City of Ava is a city of the fourth-class in the State of Missouri,
- WHEREAS,** RSMo 71.940 gives jurisdiction and power to fourth-class cities for the revision of the general ordinances of the municipality,
- WHEREAS,** The Board of Aldermen of the City of Ava, Missouri wishes to promote the safety and welfare of the citizens of the City of Ava, Missouri, and
- WHEREAS,** It is deemed to be in the public interest for the city to enact ordinances to provide regulations regarding the safety and welfare of the citizens.

THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF AVA, MISSOURI,

Section 1. That all of Chapter 10 will read as follows:

CHAPTER 10 ANIMALS

ARTICLE I.- IN GENERAL

ARTICLE II.- DOG AND CAT CONTROL

ARTICLE III.- CRUELTY TO ANIMALS

ARTICLE I. IN GENERAL

SECTIONS 10-1-10-30. RESERVED

ARTICLE II. DOG AND CAT CONTROL

SEC. 10-31. RUNNING AT LARGE.

SEC. 10-32. RESTRAINT.

SEC. 10-33. ANNOYING BARKING DOGS; .

SEC. 10-34. VICIOUS/DANGEROUS OR OFFENSIVE DOGS.

SEC. 10-35. MAXIMUM NUMBER OF CATS/DOGS OWNED.

SEC. 10-36. VACCINATION FOR RABIES REQUIRED BY LICENSE VETERINARIAN.

SEC. 10-37—10-70. RESERVED

SEC. 10-31. RUNNING AT LARGE.

No dog or cat shall be permitted to run at large within the limits of this city. The pound master and every police officer shall impound any dog or cat found running at large and shall give notice of the impounding to the owner of such dog or cat, if known. In case the owner is unknown, such officer shall post notice at the pound and at the Ava Police Department that if the dog or cat is not claimed within seven (7) days after the posting of this notice, it will be disposed of. The city shall house and feed, in a humane manner, any dog or cat held at the pound. A charge not to exceed \$10.00 per day for feed and care shall be charged for any dog or cat held at the pound, plus a rabies shot and pickup fee of \$20.00 per cat and \$20.00 per dog. All charges for care and keep of any dog or cat shall be paid by the owner before the dog or cat is released to him. If any dog or cat is found to be running at large more than once, and is contained in the pound for running at large, there will be a penalty fee of \$50.00 added to the total charge, which will increase for each occurrence. Nothing in this section authorizes any animal control officer or police officer to enter into any inhabited structures in pursuit of any dog or cat, however, any dog or cat seen running at large and entering the curtilage area of an inhabitable structure may be seized if in plain view of the animal control officer or police officer. Possession of any dog or cat by any person shall be prima facie evidence of ownership of such animal. Any person allowing a dog or cat under his control to run at large shall be deemed guilty of a misdemeanor.

SEC. 10-32. RESTRAINT.

The restriction imposed by section 10-31 shall not prohibit the appearance of any dog or cat upon streets or public property when such dog or cat is on a leash and kept under the control of the accompanying person.

SEC. 10-33. ANNOYING BARKING DOG; NUISANCE COMPLAINTS.

No person shall own, keep or harbor any dog which by loud, continual or frequent barking, howling or yelping shall annoy or disturb any neighborhood or person, or which habitually barks at or chases pedestrians or drivers or owners of horses or vehicles. Any person in physical possession and control of any animal shall remove excreta or other solid waste deposited by the animal in any public or private area not designated to receive such waste including, but not limited to, streets, sidewalks, parking lots, public parks or recreation areas and private property. Animal waste shall be deposited in sealed bags or containers placed inside plastic garbage bags. Reference, see Sec. 98-256.

SEC. 10-34. VICIOUS/DANGEROUS OR OFFENSIVE DOGS.

Section 10-34. – Dangerous/vicious or offensive dogs.

1. Definitions:

(a) Definition of dangerous/vicious dog.

For the purpose of this section, the terms “vicious” and “dangerous” are considered synonymous, and from this point forward the use of one term shall be applicable to the other. A dog or other animal shall be considered dangerous by virtue of:

- Having inflicted a severe or fatal injury on a human being on public or private property. The term “severe injury” means any physical injury, resulting directly from an animal’s bite or strike which results in death, broken bones, lacerations requiring stitching, or hospitalization. The victim receiving severe injuries must provide local law enforcement with a signed physician’s statement documenting the injury and the treatment qualifying such as a severe injury;

- Having bitten in an aggressive manner a human being, without provocation, on public or private property.
- While on the owner's property having bitten, without provocation, a human being other than the owner or a member of the owner's family who normally resides at the place where the dog is kept.
- Having a known propensity, tendency or disposition to attack, without provocation, causing injury to or otherwise threaten the safety of human beings or domestic animals.
- Having, in the absence of a bite, displayed characteristics such as habitually snapping, charging, growling or otherwise manifest a disposition to bite, attack or injure any person or domestic animal upon the streets, sidewalks, or any public grounds, or private property.
- Where the official records of the animal control officer or local law enforcement of this city or any other jurisdiction establishes that said animal has bitten any person or other animal on one or more separate occasions without provocation.

In making a determination by the animal control officer or local law enforcement officer as to whether an animal is dangerous, elements that may be considered, but are not required are: Provocation; location of the event; reason for the attack; the animal acting protectively; the animal was tormented or abused; the seriousness of an attack and previous attacks.

(b) Definition of an offensive animal:

An offensive animal shall be any dog that inflicts a non-severe injury substantially different in nature than when described under subsection (a) of this section and shall be determined after an investigation by the animal control officer or local law enforcement officer.

2. Dangerous/vicious dogs prohibited – Exceptions.

- (a) It shall be unlawful for any person to own or allow to be upon any premises within the city limits any dangerous or vicious dog except in accordance with the following provisions:

Note: Kennel in this section is referred to as an enclosed living quarter for a single dog, not to be confused with a licensed kennel for breeding dogs.

1. *Confinement.* No vicious dog shall be allowed beyond the owner's property lines. All vicious dogs shall be securely enclosed in a locked pen or kennel, if outdoors. Such enclosure shall be properly ventilated and kept in a clean and sanitary manner with water, food and protection from the elements. No other dog(s) shall be enclosed in the same structure as a dangerous dog. Such pen or kennel must have secure sides, top and bottom, being secured together as not to allow escape. If it has no bottom, the sides must be embedded into the ground no less than twelve (12) inches. Any pen or kennel must be locked with a key or combination lock when such dogs are within the structure. No person shall permit a vicious dog to go outside its kennel or pen unless such dog is muzzled and securely leashed by either a chain or rope, no longer than 4 feet in length, and said person is in physical control of the leash or rope. No vicious dog may be kept on a porch, 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 vicious dog shall be kept in a house or structure when windows or doors are open where the screened enclosure is the only obstacle preventing the dog from exiting the structure.

2. *Signs.* Any person who owns, keeps or harbors a vicious dog shall display in a prominent

place on their premises a sign easily readable by the public using the words "Beware of Dog". In addition, a similar sign is required to be posted on the pen or kennel of such dog.

3. Keeping a dangerous/vicious dog- Penalties.

- (a) A person commits the offense of keeping a dangerous dog if he or she owns or possesses a dog that has previously bitten a person or a domestic animal without provocation and that dog bites any person on a subsequent occasion.
- (b) The offense of keeping a dangerous dog is a class B misdemeanor, unless such attack:
 - (1) Results in serious injury to any person, in which case, it is a class A misdemeanor; or
 - (2) Results in serious injury to any person and any previous attack also resulted in serious injury to any person, in which case, it is a class E felony; or
 - (3) Results in the death of any person, in which case, it is a class D felony.
- (c) In addition to the penalty included in subsection (b) of this section, if any dog that has previously bitten a person or a domestic animal without provocation bites any person on a subsequent occasion or if a dog that has not previously bitten a person attacks and causes serious injury to or the death of any human, the dog shall be seized immediately by an animal control officer or by the local law enforcement. The dog shall be impounded and held for ten business days after the owner or possessor is given written notification and thereafter euthanized.
- (d) The owner or possessor of the dog that has been impounded may file a written appeal to the circuit court to contest the impoundment and euthanizing of such dog. The owner or possessor shall provide notice of the filing of the appeal to the animal control officer or local law enforcement who seized the dog. If the owner or possessor files such an appeal and provides proper notice, the dog shall remain impounded and shall not be euthanized while such appeal is pending and until the court issues an order for the destruction of the dog. The court shall hold a disposition hearing within thirty days of the filing of the appeal to determine whether such dog shall be humanely destroyed. The court may order the owner or possessor of the dog to pay the costs associated with the animal's keeping and care during the pending appeal.
- (e) Notwithstanding any provision of sections 273.033 and 273.036, section 578.022 and this section to the contrary, if a dog attacks or bites a person who is engaged in or attempting to engage in a criminal activity at the time of the attack, the owner or possessor is not guilty of any crime specified under this section or section 273.036, and is not civilly liable under this section or section 273.036, nor shall such dog be destroyed as provided in subsection (c) of this section, nor shall such person engaged in or attempting to engage in a criminal activity at the time of the attack be entitled to the defenses set forth in section 273.033. For purposes of this section "criminal activity" shall not

include the act of trespass upon private property under section 569.150 as long as the trespasser does not otherwise engage in, attempt to engage in, or have intent to engage in other criminal activity nor shall it include any trespass upon private property by a person under the age of twelve under section 569.140.

State Law Reference- Similar provisions, RSMo 578.024

- (f) Any owner of a dog declared to be dangerous shall, upon conviction for violation of any provision, be subject to a fine of not less than two hundred fifty dollars (\$250.00) for first time offender and no less than five hundred dollars (\$500.00) for second time offender. The court may also penalize by both fine and imprisonment of up to ninety (90) days.
- (g) Any owner of a dog declared offensive, where the animal inflicts a non-severe injury, shall be subject to a fine of no less than one hundred dollars (\$100.00) for the first-time offense. Fines shall be doubled for each occurring offense. When a dog has bitten a person, whether non-severe or severe injuries have occurred, the dog shall be quarantined at the animal pound for ten days and tested for rabies. Owner shall be subject to all fees associated with care of the dog while in the animal pound. *Exceptions shall be made, regarding quarantine, if the owner shows proof of rabies vaccination which shall be under the discretion of the animal control officer or local law enforcement officer.*
- (h) Any owner of a dog declared to be dangerous shall, if the dog becomes loose from its confinement, immediately contact local law enforcement and inform them the dog is running at large. If an owner decides to sell or get rid of a dog that has been deemed vicious, they are to contact local law enforcement and animal control so it can be documented on the dog's record; also, a notice will need to be given to the new owner stating the dog has been deemed a vicious/dangerous dog.

SEC. 10-35. MAXIMUM NUMBER OF CATS/DOGS OWNED.

No person living in an area of the city zoned as residential shall own no more than three (3) cats or three (3) dogs. The total number of domestic pets are not to exceed the maximum allowed total of six (6) combined. Raising litters of dogs or cats for the purpose of selling shall be prohibited in a residential zone. However, if a dog or cat has a litter, you may allow them to be weaned and then given away so as not to exceed the maximum allowed number of domestic pets.

SEC. 10-36. VACCINATION FOR RABIES REQUIRED BY LICENSE VETERINARIAN.

No person shall keep or harbor a cat or dog which has not had a current rabies vaccination. Vaccinations shall only be performed by a doctor qualified to practice veterinary medicine under his direction of the state in which the cat or dog is vaccinated. The owner shall keep a copy of the certificate of vaccination and shall present the certificate to the impounding officer upon request.

SEC. 10-37—10-70. RESERVED.

ARTICLE III. CRUELTY TO ANIMALS

SEC. 10-71. PROHIBITED ACTS.

SEC. 10-72. BIRD SANCTUARIES & DOMESTIC FOWLS.

SEC. 10-73—10-78. RESERVED

SEC. 10-71. PROHIBITED ACTS.

No person within the city shall cause or have caused any form of animal abuse as listed below:

1. A person is guilty of animal abuse or neglect when a person:

(1) Intentionally or purposely kills an animal in any manner not allowed by or expressly exempted from the provisions of sections 578.005 to 578.023 and 273.030, RSMo;

(2) Purposely or intentionally causes injury or suffering to an animal; or

(3) Having ownership or custody of an animal knowingly fails to provide adequate care or adequate control by failing to provide necessary sustenance, drink and protection from the elements, or cause any of these omissions to be done. Any such shelter so provided shall be kept clean and inoffensive insofar as is reasonably possible, and filth, offal, etc., shall not be allowed to unduly accumulate therein.

(4) No person in the city shall abandon any animal or cause any animal to be abandoned.

(5) No person in the city shall maintain any place where fowl or animals are suffered to fight upon exhibition or for sport, or upon any wager.

(6) No person in the city shall poison any dog or cat, or any other animal if known to belong to another person or distribute poison in any manner whatsoever with the intent or for the purpose of poisoning any dog or cat, or any other animal known to belong to another person.

2. Animal abuse is a class A misdemeanor, unless the defendant has previously plead guilty to or has been found guilty of animal abuse or the suffering involved in subdivision (2) of subsection 1 of this section is the result of torture or mutilation, or both, consciously inflicted while the animal was alive, in which case it is a class D felony.

State Law Reference- Similar provisions, RSMo 578.012

3. Licensed kennels, within an agriculture zone or B-4 zoned district, that breed in large operations will be required to provide proper care as defined in the Canine Cruelty Prevention Act found in RSMo 273.345.

SEC. 10-72. BIRD SANCTUARIES AND DOMESTIC FOWL.

The entire area embraced within the corporate limits of the city is hereby designated as a bird sanctuary. It shall be unlawful to trap, hunt, shoot or attempt to shoot or molest in any manner any bird or wild fowl or to rob bird nests or wild fowl nests; provided, however, that if starlings, pigeons or similar birds are found to be congregated in such numbers in a particular locality that they constitute a nuisance or menace to health or property in the opinion of the proper health authorities of the city, then, in such event, the health authorities shall meet with representatives of the Audubon Society, Bird Club, Garden Club or Humane Society, or as many of such clubs as are found to exist in the city, after having given at least three days' actual notice of the time and place of the meeting to the representatives of such clubs.

No person shall permit any geese, ducks, chickens, turkeys and all other domestic fowls to run at large. The owner, keeper or possessor of such domestic fowl shall keep such fowls, geese, ducks, chickens and turkeys on the premises of such owner, keeper or possessor within the properly zoned area for which they are allowed.

SEC. 10-73—10-78. RESERVED.

Section 2. This ordinance shall take effect and be in force from and after its passage and approved by the Board of Aldermen of the City of Ava, Missouri. All ordinances or parts of ordinances in conflict with the terms hereof are void and of no effect.

Passed and Approved on _____, 2019.

Reviewed and approved as to form by City Attorney:

Larry Tyrrell

Mayor Burrely Loftin

Attest:

City Clerk Suzanne Welsh

