

ORDINANCE NO. 2147

AN ORDINANCE TO AMEND CHAPTER 9 OF THE WEST MEMPHIS MUNICIPAL CODE TO PROHIBIT CHAINING OR TETHERING OF DOGS, TO PROHIBIT THE KEEPING OF VICIOUS DOGS WITHIN THE CITY OF WEST MEMPHIS, TO MAKE TECHNICAL CORRECTIONS, AND FOR OTHER PURPOSES

WHEREAS, there are numerous reported findings of the effects of chaining or tethering of dogs, including, but not limited to, a report from the Centers for Disease Control which found that chained dogs are 2.8 times more likely to bite, and a report from the U.S. Department of Agriculture stating:

Our experience in enforcing the Animal Welfare Act has led us to conclude that continuous confinement of dogs by a tether is inhumane. A tether significantly restricts a dog's movement. A tether can also become tangled around or hooked on the dog's shelter structure or other objects, further restricting the dog's movement and potentially causing injury.

and

WHEREAS, the West Memphis Animal Control Commission has recommended that chaining or tethering of dogs be prohibited; and

WHEREAS, the West Memphis Animal Control Commission has further recommended that the keeping of vicious dogs be prohibited in West Memphis;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WEST MEMPHIS, ARKANSAS, THAT:

SECTION 1. Section 9.04.010 of the West Memphis Municipal Code is hereby amended to read as follows:

Definitions.

For the purpose of this chapter the following definitions shall apply unless the context clearly indicates or requires different meaning:

"Abandon" means any person in possession of an animal who knowingly refuses to provide care for the animal as defined by this chapter.

"Animal" means any living creature, domestic or wild.

"Animal control officer" means any person designated by the state of Arkansas or a municipal government as a law enforcement officer who is qualified to perform such duties under the laws of this state.

"Animal shelter" means any facility operated by a municipal agency or its authorized agents for the purpose of impounding or caring for animals held under the authority of this chapter or state law.

"At large" means not under the physical control of the animal's owner or harborer, or his authorized representative, either by leash, cord, chain, fence or enclosure of sufficient strength or construction to contain the animal. An animal intruding upon the property of another person or upon public property and not under the physical control referred to herein shall be deemed running at large. An animal within an automobile or other vehicle shall not be deemed running at large if the animal is physically confined to the vehicle. An animal shall not be considered at large when on the premises of the owner or harborer thereof. The term "premises" shall not include unfenced curtilage.

"Cat" means a feline of either sex, including one neutered or sterilized.

"City" means the City of West Memphis, Arkansas.

"Direct point chaining" means attaching an animal directly to any object by means of a rope, chain, or cable attached to the dog's collar or harness but does not include temporary restraint of a dog for purposes of vehicular transport.

"Dog" means a canine of either sex, including one neutered or sterilized.

"Enclosure" means a fence or structure forming or causing an enclosure suitable to confine a vicious animal and prevent the animal from escaping.

"Farm animal" means any animal used to create food for consumption, including, but not limited to chickens, ducks, geese, guinea fowl, turkeys, hogs (pigs), goats and cows.

"Harbor" means, for a period of three days or more, to keep and care for an animal or provide a premises to which the animal returns.

"Humane society" means specifically the Humane Society of Eastern Arkansas, Inc., or its successor, or any other organization existing under the laws of the state of Arkansas for the prevention of cruelty to animals.

"Kennel" and/or "pet shop" means and includes any individual or establishment for the raising, training, boarding or selling of dogs, cats, birds, mice, rats, reptiles, fowl or fish or other small animals for hire or profit.

"License" means a permit issued by the city to indicate that an animal is vaccinated against rabies in accordance with city ordinance and that the owner or harborer has remitted to the city the levied permit fee.

"Public nuisance" means any animal or animals which:

1. Molests passersby or passing vehicles;
2. Attacks other animals;
3. Trespasses on school grounds;

4. Is repeatedly at large;
5. Damages public or private property;
6. Interferes with refuse collection or spreads trash from refuse containers or molests meter readers;
7. Barks, whines or howls in excessive, continuous, untimely fashion.

"Restraint" means any animal secured by leash or lead or under the control of owner or harbinger and obedient to that person's command.

"Tether" means a rope, chain, or cable that is attached to a dog's collar or harness for purposes of restraining the dog.

"Vicious animal" means:

1. Any animal which, when unprovoked, approaches in a manner of attack any person upon the streets, sidewalks or any other public ground or place;
2. Any animal with a known propensity, tendency or disposition to attack without provocation human beings or domestic animals;
3. Any animal which, without provocation, bites or attacks a human being or domestic animal on public or private property; or
4. Any animal owned or harbored primarily or in part for the purpose of animal fighting or any animal trained for animal fighting.
5. Any animal which has been declared vicious, or has been given some other designation, by another governmental body under circumstances that would meet the grounds for vicious animal designation under the provisions of this chapter.

Notwithstanding the above definition, no animal shall be declared vicious if the person attacked or bitten by such animal was teasing, tormenting, abusing or assaulting the animal or was committing or attempting to commit a crime.

No animal shall be declared vicious if a domestic animal which was bitten or attacked was teasing, tormenting, abusing or assaulting the animal. No Animal shall be declared vicious if the animal was protecting or defending a human being within the immediate vicinity of the animal from an unjustified attack or assault.

"Wild animal" means any nonhuman primate, raccoon, skunk, fox, wolf, coyote, poisonous snake, leopard, panther, tiger, lion, lynx or any other warm-blooded animal which can normally be found in the wild state, or the offspring borne to wild animals bred with domestic dogs or cats.

SECTION 2. Section 9.04.020 of the West Memphis Municipal Code is hereby amended to read as follows:

- A. No owner shall fail to provide his animals with sufficient good and wholesome food and water; shelter which provides protection from the weather including four sides with opening, roof and floor; veterinary care when needed to prevent suffering; and with humane care and treatment.
- B. No person shall cruelly treat any animal in violation of the laws of the State of Arkansas.
- C. No owner of an animal shall abandon such animal.
- D. Any person who, as the operator of a motor vehicle, strikes a domestic animal shall, within a reasonable time, report the accident to the appropriate law enforcement agency

or to the local humane society.

- E. No person shall expose any known poisonous substance or toxic chemical, whether mixed with food or not, so that the same shall be liable to be eaten by any animal; provided that it is not unlawful for a person to expose, on his property, common rat poison mixed only with vegetable substance.
- F. Any person owning, possessing or keeping a dog shall keep the dog securely confined behind a fence or otherwise restrained upon the person's property by adequate means to prevent the dog's escape; or shall effectively control the dog, whether on or off the person's property, by means of a leash or other proper method of supervised restraint from which the dog cannot escape.
- G. Chaining. Direct-point chaining or tethering of dogs to any object is prohibited.

SECTION 3. Section 9.04.100 of the West Memphis Municipal Code is hereby

amended to read as follows:

Impoundment.

- A. The West Memphis animal shelter is authorized to accept from the animal control officer or any resident of the city, and to impound, any dog or cat found running at large in violation of this subchapter. The animal control officer shall not be required to respond to requests to pick up unconfined cats until the person making the request has confined, or restrained the animal so that it can readily be taken into custody by the animal control officer. The animal control officer may use humane animal traps or tranquilizers to assist in confining the cat.
- B. Whenever any animal in the animal shelter bears a current city tag, it shall be the duty of the animal control officer to notify the owner or the person to whom the tag was issued, if such person or owner can be found, that the animal has been taken up and placed in the animal shelter and will be destroyed or released to the humane society after ten days unless the fees hereinafter prescribed are paid. If the owner or person to whom the tag was issued cannot be found, the animal control officer shall, by any form of mail requiring a signed receipt sent to such person's last known address, notify such person that the animal has been impounded at the animal shelter, and will be destroyed or released to the humane society after ten days if the fee hereinafter prescribed is not paid. For the purpose of this section, the first day of taking up shall be counted as the first day of the impoundment period provided herein. Any unlicensed animal may be destroyed (i) if space is limited or (ii) if the animal is suffering from disease or injury upon the approval of the animal control officer in charge and one other party.

SECTION 4. Section 9.04.130 of the West Memphis Municipal Code is hereby

amended to read as follows:

Vicious dogs.

A. "Vicious dogs" means:

- (1) Any dog with a propensity, tendency or disposition to attack, cause injury or otherwise endanger the safety of human beings or any domestic animals as evidenced by its habitually or repeated chasing, snapping or barking.
- (2) Any dog which attacks a human being or any domestic animal without provocation.
- (3) Any dog owned or harbored primarily or in part for the purpose of dog fighting or any dog trained for dog fighting.
- (4) Any dog which has been declared vicious, or has been given some other designation, by another governmental body under circumstances that would meet the grounds for vicious dog designation under the provisions of this chapter.

Nothing contained herein shall be construed as requiring the actual infliction of a physical injury prior to a determination that a dog is a vicious dog.

B. (Reserved)

- C. Initial Determination. An animal control officer shall deem a dog to be a vicious dog if the animal control officer determines that the dog satisfies the definition of a vicious dog as described in subsection (A). Upon deeming the dog to be a vicious dog, the animal control officer shall notify the owner, as evidenced by any current city tag, by hand delivery or by mailing a notice by any form of mail requiring a signed receipt to the owner at such person's last known address. The officer shall also apprehend the dog and shall not release it until the requirements of subsection (E) have been met or until so ordered by a court of competent jurisdiction.

- D. Appeal of Determination. Any person who has received notice that his or her dog has been deemed a vicious dog may appeal such decision to the Chairman of the West Memphis Animal Control Commission. The appeal must be made by providing notice to the West Memphis City Hall within ten (10) days of the day the notice was made in accordance with subsection (C). Upon receiving an appeal, the Chairman, or the Chairman's designated representative, shall schedule and hold a hearing within ten (10) days to determine whether the initial determination was rendered in error. The decision of the Chairman, or the designated representative, shall be considered the final decision of the city as to whether the dog is a vicious dog. If the initial determination is not appealed or if the right to appeal is waived, the initial determination shall be considered the final decision of the city as to whether the dog is a vicious dog. An appeal from the decision of the Chairman, or the designated representative, may only be made to a court of competent jurisdiction. During the time a dog remains in the custody of the West Memphis Animal Control Commission, the owner of the dog shall be responsible for all fees, costs and expenses as set out in Section 9.04.110.

- E. Release. A dog that has been apprehended pursuant to subsection (C) shall only be released by the animal shelter if all of the following conditions have been met:

- (1) The owner has signed a written agreement that unless and until the dog is determined to no longer be a vicious dog by the Animal Control Commission or a court of competent jurisdiction, the dog shall be euthanized or removed from the City of West Memphis. Any vicious dog released upon condition that it will be removed from the City of West Memphis shall not be permitted to return to the City of West Memphis and if such vicious dog is subsequently apprehended within the city limits such

vicious dog shall be euthanized.

(2) No vicious dog in the possession of the Animal Control Commission shall be released to any person other than the owner.

- F. Failure to Retrieve. The Animal Control Commission may humanely destroy any vicious dog that is not retrieved by the owner, as evidenced by any current city tags, within five (5) days of the day the owner is notified that a final decision has been reached deeming the dog a vicious dog or within five (5) days of the day that the owner is notified that the vicious dog has been impounded, whichever is later. A dog that is found to not be a vicious dog shall be retrieved, destroyed, or adopted in accordance with the ordinances, rules, and regulations of the city and the Animal Control Commission that generally apply to all impounded dogs.

SECTION 5. Section 9.04.135 of the West Memphis Municipal Code, entitled Keeping of Registered Vicious Dogs, is hereby repealed in its entirety.


SECTION 6. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of any such conflict.

SECTION 7. SEVERABILITY CLAUSE. If any section, subsection, sentence, clause, or phrase of this ordinance or the application thereof to any person or circumstances is held invalid, such decision shall not affect the validity of the remaining portions of this ordinance or application of this ordinance which can be given effect without the invalid section, subsection, sentence, clause, or phrase, and to this end the provisions of this ordinance are declared severable. **PASSED AND APPROVED** this 6th day of July, 2006.

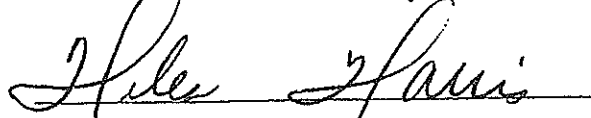
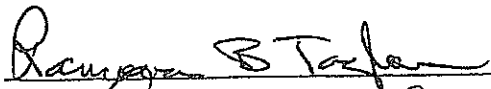
ATTEST:



PHILLIP PARA, CITY CLERK


WILLIAM H. JOHNSON, MAYOR

SPONSORED BY:



RECEIVED
City Clerk's Office
Date/Time 6/11/06 2:00pm
By R Taylor