

ORDINANCE NO. 863

AN ORDINANCE RELATING TO DOG CONTROL WITHIN THE CITY OF MADRAS; IMPOSING CERTAIN RESTRICTIONS AND REGULATIONS ON CANINES; ESTABLISHING A HEARING PROCESS; SUPERSEDING AND REPEALING ORDINANCES NO. 438 AND 454 AND ALL OTHER ORDINANCES, RESOLUTIONS, AND/OR POLICIES IN CONFLICT WITH THIS ORDINANCE; AND DECLARING AN EMERGENCY.

WHEREAS, the Madras City Council (the "City Council") desires to provide a safe and healthy environment for citizens in the Madras community; and

WHEREAS, controlling dogs within the City of Madras (the "City") is an essential part of providing a safe and healthy environment; and

WHEREAS, the City's current Dog Control Ordinance No. 438, adopted by the Council on March 12, 1985, is outdated and insufficient to adequately address the various dog control issues that arise from time to time; and

WHEREAS, the City's Dangerous Canine Ordinance No. 454, adopted by the Council on April 13, 1988, is also outdated, ineffective, and in need of revisions as evidenced by the feedback the City has received during numerous meetings from interested citizens, including local canine breeders and veterinarians; and

WHEREAS, the City has determined that it would be beneficial and easier to enforce a dog control ordinance that combines elements of Ordinances No. 438 and No. 454 into a single dog control ordinance; and

WHEREAS, the City, Jefferson County (the "County"), and the Dangerous Canine Commission (the "Commission"), each serving major roles in regulating and addressing dog issues within the City, support the aforementioned objectives.

NOW, THEREFORE, the City of Madras ordains as follows:

SECTION 1: ORDINANCE TITLE. This Ordinance No. 863 (this "Ordinance") will be known as the "Madras Dog Control Ordinance."

SECTION 2: FINDINGS; PURPOSE. The purpose of this Ordinance is to provide specific regulations for the control of dogs within the City, to authorize law enforcement to enforce the provisions of this Ordinance, to provide guidelines that will assist the Commission when asked to determine the classification of a canine that is thought to be or proven to be dangerous, and to provide a safer environment for Madras citizens.

SECTION 3: DEFINITIONS.

Unless the context requires otherwise, when used in this Ordinance the following terms and phrases have the meanings assigned to them below:

“Attempt(s) to bite” means the overt action(s) of a dog that constitute a substantial step toward the actual biting of a person.

“Chief of Police” means the City’s then appointed Chief of Police or his or her designee.

“City Administrator” means the City’s then appointed City Administrator or his or her designee.

“County Clerk” means the Jefferson County Clerk or his or her designee.

“Dog(s)” mean any animal of the canine species.

“Invitee(s)” mean any person who comes upon the premises at the occupant’s invitation, express or implied, upon business that concerns the occupant, or who comes upon the premises after the occupant, expressly or impliedly, has led such person to believe that the premises were intended to be used by the visitor. For purposes of this Ordinance, “invitee(s)” also includes licensees (*i.e.*, persons who come upon the premises for their own purposes with the express or implied consent of the occupant), such as postal carriers, meter readers, firefighters, and police officers.

“Leash” means a cord, chain, strap, or other flexible material, no more than eight (8) feet in length and of sufficient strength to control the dog.

“Own” means having a right of property in a dog or caring for, harboring, acting as custodian for, keeping, or knowingly permitting a dog to remain on or about the premises occupied by that person.

“Owner(s)” means any person who has a right of property in a dog or who cares for, harbors, acts as custodian for, keeps, or knowingly permits a dog to remain on or about the premises occupied by that person.

“Running at large” or “run at large” means any dog that is off or outside of the premises belonging to the owner of such dog, not under the control of its owner by means of a leash, or contained in or on any vehicle.

“Unlicensed” means any dog not on the property of its owner and not wearing a current license tag as required by this Ordinance.

SECTION 4: PERSONAL PROPERTY. Dogs are hereby declared to be personal property.

SECTION 5: LICENSES AND LICENSE FEES. Every owner whose dog has a set of permanent canine teeth or has attained the age of four (4) months, whichever occurs first, must immediately obtain a license for such dog from the County Clerk or an authorized licensing agent. The County Clerk or authorized licensing agent will issue a license tag to the owner upon payment of the designated fee, to be determined by resolution of Jefferson County, and presentation of a current certificate of vaccination for rabies. No license fee, however, will be required for any “assistance animal” as defined under ORS 649A.143, as amended. The license tag must be attached securely to a collar or harness on the dog for which it was issued. Owners must renew the dog license before the license expires for as long as they own the dog.

SECTION 6: RABIES INOCULATION. All dogs must be inoculated against rabies unless specifically exempt under state or federal law. It is the responsibility of the owner to demonstrate to the County Clerk or licensing agent's satisfaction that the subject dog falls within an exemption under state or federal law. Owners must at all times possess a current certificate of vaccination for rabies for each dog owned, unless exempted.

SECTION 7: DOGS RUNNING AT LARGE. An owner must not permit his or her dog to run at large in the City.

SECTION 8: DOG WASTE. An owner must immediately remove solid waste matter deposited by the owner's dog in public parks, on public trails, and/or on any improved property other than that of the owner. It is an affirmative defense if the owner immediately removes the solid waste.

SECTION 9: NUISANCES.

9.1 Nuisance Defined. A dog is a public nuisance under any of following circumstances:

- (a) the dog bites or attempts to bite any person;
- (b) the dog chases a vehicle or person;

- (c) the dog damages or destroys property that belongs to someone other than its owner;
- (d) the dog scatters garbage;
- (e) the dog trespasses on the private property of a person other than its owner;
- (f) the dog disturbs any person by frequent or prolonged noises; and/or
- (g) the dog is a female in heat and is running at large.

9.2 Affirmative Defenses. In a prosecution under Section 9.1, it is an affirmative defense that

- (a) the dog's owner did not allow the dog to be a public nuisance,
- (b) the dog bites or attempts to bite a person wrongfully provoking or assaulting the dog or the dog's owner, and/or
- (c) the dog bites a person or attempts to bite a person trespassing upon premises occupied by the dog's owner.

SECTION 10: IMPOUNDMENT PROCEDURES.

10.1 Authorization to Impound. A dog may be impounded if the dog is running at large, is unlicensed, or is a public nuisance pursuant to Section 9 of this Ordinance.

10.2 Reasonable Inquiry and Notice of Impoundment. A reasonable inquiry will be made as to the ownership of any dog that has been impounded. If the owner is identified, a reasonable effort will be made to notify the owner of the following:

- (a) that the dog has been impounded;
- (b) the location where impounded; and
- (c) the amount of the impoundment fee or a telephone number for inquiry regarding payment of fees required to release the dog.

After a reasonable but unsuccessful effort has been made to locate the owner, the dog may be removed from impoundment and placed for adoption as provided under Section 10.4.

10.3 Release. Unless claimed by the owner, a dog will be impounded for no less than three (3) days if the dog is without a license or identification tag and for no less than five (5) days if the dog has a license or identification tag. If the dog is unlicensed and claimed by the owner within the applicable impoundment period, the owner must pay any impound fees, purchase a license, and pay the applicable penalty for failure to have a license before the dog will be released.

10.4 Failure to Redeem. If the owner fails to redeem the dog within the allotted time, any impounded dog may be released to a reasonable person upon payment of all applicable fees and costs provided under this Ordinance if such person provides assurances that the person:

- (a) will properly care for the dog,
- (b) not allow the dog to be a nuisance, and
- (c) provides a suitable home for the dog.

10.5 Rabid Dogs. Notwithstanding the provisions of Section 10.3, any dog impounded for biting a person will be held for not less than ten (10) days to determine if the dog is rabid.

SECTION 11: **EUTHANIZING OF CERTAIN DOGS**. A dog displaying obvious or classic symptoms of rabies or that is so vicious that it cannot be impounded without unreasonable risk to human safety, or that is so seriously injured that its suffering warrants its termination, may be euthanized in a humane manner by a police officer, a properly trained employee of the local animal shelter, or veterinarian.

SECTION 12: **DANGEROUS CANINE COMMISSION**. The City Council may establish and appoint the Commission. The Commission will consist of three (3) people whom will consider appeals from classification of a dangerous dog pursuant to Section 13.2 of this Ordinance. Members of the Commission will serve until their earlier replacement or resignation.

SECTION 13: **DANGEROUS OR POTENTIALLY DANGEROUS DOGS**.

13.1 Notification to Law Enforcement Officials. Any person who observes or has evidence of behavior described in this Section 13 must promptly notify the police.

13.2 Classifications. A dog will be classified as potentially dangerous based upon specific behaviors exhibited by the dog. Notwithstanding this Section 13, the Chief of Police has discretionary authority to refrain from classifying a dog as potentially dangerous if the Chief of Police determines that the behavior was the result of the victim abusing or tormenting the dog or other extenuating circumstances. For purposes of this Ordinance, behaviors establishing various levels of potential dangerousness are as follows:

13.2.1 Level 1. Level 1 behavior is established if a dog, at large, menaces, chases, displays threatening or aggressive behavior, or otherwise threatens or endangers the safety of any domestic animal.

13.2.2 Level 2. Level 2 behavior is established if a dog, at large, menaces, chases, displays threatening or aggressive behavior, or otherwise threatens or endangers the safety of any person, or if a dog on its owner's premises menaces, chases, displays threatening or aggressive behavior, or otherwise threatens or endangers the safety of any invitee.

13.2.3 Level 3. Level 3 behavior is established if a dog, while confined, aggressively bites any person without provocation.

13.2.4 Level 4. Level 4 behavior is established if a dog, while at large, aggressively bites or causes physical injury to any person or domestic animal.

13.2.5 Level 5. Level 5 behavior is established if a dog:

- (a) whether or not confined, causes the serious injury or death of any person,
- (b) while at large, kills any domestic animal,
- (c) engages in or is found to have been trained to engage in exhibitions of fighting, or
- (d) has been classified as a Level 4 potentially dangerous dog and repeats the behavior described in subsection 13.2.4 of this Section 13.2 after the owner receives notice of the Level 4 classification.

13.3 Notice of Potential Classification. If any dog in the City is identified pursuant to Section 13.2 by any City police officer, canine control officer, or the Jefferson County Sheriff's Department as being a potentially dangerous canine, the owner of such animal will be notified, in writing, of an intention to so classify, and the

owner will be provided a copy of this Ordinance. The officer may make the classification upon receipt of a statement of any individual who personally observed the dog's behavior. The statement will provide a detailed description of the behavior observed.

13.4 Exceptions. No dog will be classified as potentially dangerous if the behavior in question was directed against a person engaged in criminal behavior at the time of the attack. Moreover, no dog may be classified as dangerous or potentially dangerous if the behavior in question was directed against a trespasser inside any fully enclosed building on private property if all exterior doors of the building were locked at the time the trespass occurred or if the behavior in question was directed against any person inside any motor vehicle interior (not including the open bed of a vehicle or truck) who entered the vehicle without permission of the owner or driver of the vehicle.

13.5 Determination. The Chief of Police is authorized to determine whether any dog has engaged in the behaviors specified in this Section 13. This determination must be based upon an investigation that includes observation of and testimony about the dog's behavior, including the dog's upbringing and the owner's control of the dog. These observations and testimony may be provided by City police officers, other employees of the City, or other witnesses who personally observed the behavior. Each witness must sign a written statement attesting to the observed behavior and agree to provide testimony regarding the dog's behavior, if necessary. The Chief of Police must give the dog's owner written notice, by certified mail or personal service, of the dog's:

- (a) specified behavior,
- (b) classification as a potentially dangerous dog, and
- (c) any additional restrictions that may be applicable to the dog by reason of its classification.

13.6 Appeals. If the owner denies that the behavior in question occurred (or the dog's classification), the owner may appeal the classification to the Commission by filing a written request for a hearing with the City Administrator within ten (10) days of the date the notice was mailed to the owner by certified mail or the owner was personally served. The City Administrator must, within a reasonable period of time, ask that a public hearing be scheduled before the Commission on any appeal of the classification of a dog as potentially dangerous. The conduct of the hearing will be exclusively within the guidelines of the Oregon Administrative Rules pertaining to quasi-judicial hearings. The owner and any other persons having relevant evidence concerning the dog's behavior will be allowed to attend and present testimony. The Commission must determine whether the behavior specified in this Section 13 was exhibited by the dog in

question. The Commission must, after taking into consideration all testimony presented during the hearing, issue an order containing their determination, which will be final.

13.7 Restrictions Pending Appeal. Once the owner has received notice of the dog's classification as a potentially dangerous dog pursuant to this Ordinance, the owner must comply with the restrictions specified in the notice. The Chief of Police will have the authority to impound the dog pending completion of all appeals.

13.8 Marking of Potentially Dangerous Dogs. To ensure correct identification, all dogs that have been classified as potentially dangerous will be marked with an identifying mark. The character, location, and manner of this marking will be determined by the Commission unless the Commission leaves this to the discretion of a veterinarian with the stipulation that the mark must be clearly visible.

13.9 Additional Restrictions. In addition to all other applicable laws and regulations, the owner of a potentially dangerous dog must comply with the regulations below, and the owner of a dog that has been classified as having Level 2, Level 3, or Level 4 behavior will provide proof that the owner has liability insurance insuring against injury that may be caused by the dog with minimum limits of \$150,000 per occurrence.

13.9.1 Level 1. If the dog is found to have engaged in Level 1 behavior, the dog must be restrained by a physical device or structure that prevents the dog from reaching any public sidewalk or adjoining property whenever that dog is outside the owner's home and not on a leash.

13.9.2 Level 2. If the dog is found to have engaged in Level 2 behavior, the owner must confine the dog within a secure enclosure whenever the dog is not on a leash or inside the home of the owner. The enclosure must be a locked pen or structure suitable to prevent the entry of young children and designed to prevent the animal from escaping. The pen or structure must have minimum dimensions of five (5) by ten (10) feet and must have secure sides and a secure top. If the enclosure has no bottom secured to the sides, the sides must be embedded in to the ground no less than two (2) feet, or embedded in concrete or otherwise secured to prevent digging. The enclosure must be at least five (5) feet from side or rear property lines and will be in areas on the owner's premises where the public is not permitted access. The dog must be kept away from those portions of the premises where persons may be invited onto the premises by the owner. The enclosure must also provide the dog protection from the elements.

13.9.3 Level 3. If the dog is found to have engaged in Level 3 behavior, the owner must meet the requirements of subsection 13.9.2 above and must post conspicuous warning signs on the property where the dog is kept and where it may be

easily seen by the public. The sign will be obtained from the City at the owner's expense.

13.9.4 Level 4. If the dog is found to have engaged in Level 4 behavior, the owner must meet the requirements of subsections 13.9.2 and 13.9.3 and may not permit the dog to be off the owner's property unless the dog is muzzled, restrained by an adequate leash, and under the control of a capable person. Additionally, the owner will notify the City or County canine control officer immediately if the dog is loose, unconfined, has attacked another animal, or has attacked a person. If the dog has been sold, given away, or has died, the owner will notify the City or County canine control officer within twenty-four (24) hours and provide the name, address, and telephone number of the new owner, who must, if residing in the City limits, comply with the requirements of this Ordinance.

13.9.5 Level 5. Any dog that has been found to have engaged in Level 5 behavior will be euthanized in accordance with Section 11 of this Ordinance. In addition, the Commission may for a period of time suspend the owner's right to own any dog in the City, including dogs currently owned by that person.

SECTION 14: **RESPONSIBILITY FOR MINOR**. It is no defense to any violation of this Ordinance that the true or registered owner of a dog is of such minor age as to prohibit appearing to answer such charge(s) in court, and, upon such occurrence, the parent or guardian of such minor owner will be required to appear on behalf of the minor owner and assume full responsibility for the actions of the minor.

SECTION 15: **INTERFERENCE WITH OFFICERS**. It is unlawful for any person to interfere with, molest, or harm any police officer in the execution of his or her duties under the terms of this Ordinance.

SECTION 16: **PENALTIES**. Violation of any provision of this Ordinance constitutes a violation punishable by a fine of \$250.00. Every full day during which an activity continues to be conducted in violation of this Ordinance will be considered a separate offense. In addition to the penalties provided in this Section 16, the City may sue in a court of competent jurisdiction (including, without limitation, Jefferson County Circuit Court) to obtain a judgment by execution and/or seek an injunction to prohibit a person from violating this Ordinance.

If the City prevails in any action under this Section 16, it may recover reasonable attorney fees to be set by the court in addition to its costs and disbursements. Such fees are recoverable at all levels of trial and appeal. Whenever a fee required by this Ordinance is not paid when due, the City may add a penalty to the fee of an amount equal to ten percent (10%) of the fee for each month (or part thereof) during which the

fee and accumulated penalty amounts remain unpaid. The total amount of the fee and accumulated penalties may not exceed one hundred percent (100%) of the original fee. The penalties imposed by this Section 16 are not exclusive and are in addition to any other rights or remedies, civil or criminal, available to the City under applicable law.

SECTION 17: SEVERABILITY; INTERPRETATION. The provisions of this Ordinance are hereby declared severable. If any section, subsection, sentence, clause, and/or portion of this Ordinance is for any reason held invalid, unenforceable, and/or unconstitutional, such invalid, unenforceable, and/or unconstitutional section, subsection, sentence, clause, and/or portion will (a) yield to a construction permitting enforcement to the maximum extent permitted by applicable law, and (b) not affect the validity, enforceability, and/or constitutionality of the remaining portion of this Ordinance. All pronouns contained in this Ordinance and any variations thereof will be deemed to refer to the masculine, feminine, or neutral, singular or plural, as the identity of the parties may require. The singular includes the plural and the plural includes the singular. The word "or" is not exclusive. The words "include," "includes," and "including" are not limiting. Any reference to a particular law, statute, rule, regulation, code, or ordinance includes the law, statute, rule, regulation, code, or ordinance as now in force and hereafter amended.

SECTION 18: CORRECTIONS; REPEAL. This Ordinance may be corrected by order of the City Council to cure editorial and clerical errors.

This Ordinance amends, restates, supersedes, and repeals Ordinances No. 438 [an ordinance relating to dog control in the City of Madras] and No. 454 [an ordinance providing for the control of canines within the City of Madras that are deemed dangerous, and imposing certain restrictions and regulations on said animals...] in their entirety, and supersedes and repeals any and all ordinances, resolutions and/or policies in conflict with this Ordinance; provided, however, the City may continue the enforcement and/or prosecution, conviction, and/or punishment of a person who has or will violate such ordinances prior to the effective date of this Ordinance.

SECTION 19: SAVINGS CLAUSE. A prosecution which is pending on the effective date of this Ordinance and which arose from a violation of an ordinance repealed by this Ordinance, or a prosecution which is started within one year after the effective date of this Ordinance arising from a violation of an ordinance repealed by this Ordinance, may be tried and determined exactly as if the ordinance had not been repealed.

SECTION 20: EMERGENCY CLAUSE. The City Council finds that passage of this Ordinance is necessary for the immediate preservation of the peace, health, and

safety of the City's citizens. The City Council further finds that a delay of thirty (30) days prior to the effective date of this Ordinance may result in acts, omissions, and/or conditions detrimental to the peace, health, and safety of the City's citizens. Therefore, an emergency is declared to exist and this Ordinance will be in full force and effect upon its adoption by the City Council and signing by the Mayor.

PASSED by the Council and approved by the Mayor on January 13, 2015.