

CITY OF HARRISBURG ORDINANCE #2019-06,
TO AMEND THE TITLE 5.02, ANIMAL REGULATIONS,
OF THE REVISED MUNICIPAL ORDINANCES

BE IT ORDAINED by the City Council of the City of Harrisburg as follows:

ARTICLE I – PURPOSE AND JURISDICTION

SECTION 1 – PURPOSE.

Ordinance #2019-06 is an ordinance to amend Title 5.02 of the Revised Municipal Ordinances of the City of Harrisburg. The City Council of the City of Harrisburg has deemed these regulations and controls to be reasonable and reasonably related to the purpose of promoting the health, safety, and general welfare of the City of Harrisburg.

SECTION 2 – JURISDICTION.

This Ordinance shall govern all territory within the statutory jurisdiction of the City of Harrisburg, South Dakota.

SECTION 3 – SEVERABILITY AND SEPARABILITY.

Should any Article, Section, Subsection, or Provision of this Ordinance be found to be or declared invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity or constitutionality of the Ordinance as a whole or any part thereof, other than the portion so declared to be invalid or unconstitutional.

ARTICLE II – AMENDMENT TO TITLE 5.02, ANIMALS

A. Add the following definition:

Officer: A code official, a law enforcement officer, an animal control officer, or an agent/officer of a humane society, or their designees.

B. Add Chapter 5.0202.A.4 to read:

No person shall deliberately and knowingly feed or harbor any animal at large on any public or private property or public right-of-way when the placement of feed, bait, or other edible substance causes them to congregate or be drawn into an area.

C. Amend Chapter 5.0202.D to read:

It shall be deemed a violation of these regulations for any person to leave an animal unattended in a standing or parked vehicle in a manner that endangers the health or safety of such animal. The owner or operator of a vehicle containing an unattended animal will be contacted if possible before reasonable force may be used to remove such animal by any Officer. Removal of an unattended animal by an Officer shall not constitute an offense, nor shall such

CITY OF HARRISBURG ORDINANCE #2019-06,
TO AMEND THE TITLE 5.02, ANIMAL REGULATIONS,
OF THE REVISED MUNICIPAL ORDINANCES

person be held civilly or criminally liable for any damage caused by removing the animal from the vehicle.

D. Amend Chapter 5.0202.G to read:

Animal Excreta. The person charged with the care or control of any animal, except livestock, shall remove and dispose of in a sanitary manner any excreta deposited by such animal upon said person's property no less frequently than every three days and upon any public or other person's private property immediately after excretion.

E. Amend Chapter 5.0202.I to read:

An Officer shall have authority to destroy animals in packs which are actively chasing, barking, harassing, or attacking any livestock, animal, or human if, in his opinion, all other means of controlling or subduing the pack would fail. Two or more animals shall constitute a pack.

F. Delete Chapter 5.0202.L.2 and renumber following sections.

G. Amend Chapter 5.0202.M to read:

No person shall keep or cause to be kept upon any premises within the municipal limits of the City any pigeons, chickens, or fowl without first obtaining the approval of the City Planning Commission. The City Council reserves the right to adopt criteria for and impose conditions upon the approval of keeping pigeons, chickens, or fowl.

H. Amend Chapter 5.0202.N to read:

Designation of Pet Areas in Parks. The City Park Board is hereby authorized to designate areas within City parks or upon public ground as No Pet Areas or as Leash-Free Pet Areas. The Public Works Department shall post such areas as shall be required to give reasonable notice to the public. It shall be deemed a violation of these regulations for any person to permit any animal under his ownership or control to be present upon any park or public ground designated as a No Pet Area.

I. Amend Chapter 5.0202.O to read:

It is hereby deemed to be a violation of these regulations for any person, who by using or threatening to use violence, force, or physical interference or obstacle, intentionally obstructs, impairs, or hinders the enforcement of the provisions of these regulations by an Officer.

J. Amend Chapter 5.0202.Q to read:

CITY OF HARRISBURG ORDINANCE #2019-06,
TO AMEND THE TITLE 5.02, ANIMAL REGULATIONS,
OF THE REVISED MUNICIPAL ORDINANCES

No person shall seek to release any animal in the custody of an Officer except as herein provided.

K. Amend Chapter 5.0202.U.3 to read:

By, or with the written permission of the City Council or an Officer.

L. Amend Chapter 5.0203.B to read:

Any person who shall suspect any animal to be infected with rabies shall report said animal to an Officer, describing the animal and giving the name and address of the owner, if known.

M. Amend Chapter 5.0203.D to read:

Any animal displaying symptoms or characteristics of rabies may be destroyed by an Officer or a veterinarian.

N. Amend Chapter 5.0203.E to read:

If an Officer or a veterinarian determines that there is danger of the existence or spread of rabies, he shall make the facts known in writing to the Mayor. The Mayor may, upon receipt of said facts, by proclamation in the interest of public safety, order all animals in the affected area to be muzzled when off the premises of the owner for a specified period of time. Forty-eight hours after the publication of said proclamation, any animal found unmuzzled off the premises of the owner shall be seized and impounded or may be immediately destroyed if all reasonable efforts to seize said animal fail. All animals seized and impounded shall be held for observation for ten days and, if cleared by a licensed veterinarian, may be claimed by the owner, and the owner must pay the expenses incidental thereto. Any animal not claimed may be disposed of in a humane manner.

O. Amend Chapter 5.0203.F.1 to read:

When any person owning or harboring an animal has been notified that said animal has bitten or attacked any person or animal, the owner shall within twenty-four hours place the animal under the care and observation of the humane society and/or a licensed veterinarian for a period of not less than ten days. However, in those cases when the owner has a current rabies vaccination for said animal, the Officer may, if he feels the facilities are adequate and if the owner is a responsible person, quarantine the animal on the owner's premises. In this case the owner must sign a statement that he understands the responsibility and will assume the liability that is involved with the quarantine of

CITY OF HARRISBURG ORDINANCE #2019-06,
TO AMEND THE TITLE 5.02, ANIMAL REGULATIONS,
OF THE REVISED MUNICIPAL ORDINANCES

an animal that has bitten. The quarantined animal must at all times be available for inspection during the quarantine.

P. Amend Chapter 5.0203.F.5 to read:

Any animal that has bitten or attacked that cannot be captured may be destroyed in such a manner that the head is not damaged and can be immediately submitted by an Officer to a competent laboratory for pathological examination. The Officer shall notify the proper public health officer to report human contacts with, and the diagnosis made on, such animal.

Q. Amend Chapter 5.0204 to read:

Vicious Animals.

A. Vicious Animal Complaints.

1. An Officer shall initiate an investigation to determine whether or not an animal is vicious upon receipt of: a written complaint from a community resident; an oral or written complaint from a physician, veterinarian, or an Officer or based upon his own observations.
2. The Officer may impound the animal being investigated at any time during the course of the investigation if the Officer determines that the preservation of public safety is best served by impoundment.
3. An Officer may use all necessary means to control a dangerous or vicious animal so as not to immediately jeopardize the health or safety of themselves or others.
4. An owner of any animal having knowledge that his animal has caused injury, bitten, or is suspected of causing injury or biting a person shall immediately report the incident to the Lincoln County Sheriff's Department.

B. Vicious Animal Investigation.

1. An Officer shall thoroughly investigate each complaint to determine if the animal is vicious. The Officer shall initiate the investigation within two business days (inclusive) of receiving the complaint.
2. The Officer shall consider all relevant factors including, but not limited to, the severity of injury to the victim, statements from

CITY OF HARRISBURG ORDINANCE #2019-06,
TO AMEND THE TITLE 5.02, ANIMAL REGULATIONS,
OF THE REVISED MUNICIPAL ORDINANCES

the victim and/or witnesses, previous aggressive history of the animal, observable behavior of the animal, the ability of the animal to inflict injury to another animal or person, previous incidents of a similar nature, and circumstances of the incident.

3. Upon initiating an investigation to determine whether or not an animal is vicious, the Officer shall notify the owner of the animal that an investigation has begun. The notification shall be made either in person, by first class mail, or by posting the notification upon the front door of the owner's residence.
4. An animal does not have to be declared to be vicious if an injury or damage is sustained to any person who was committing a willful trespass or other tort upon premises occupied by the owner or keeper of the animal, or who was teasing, tormenting, abusing, or assaulting the animal or was committing or attempting to commit a crime.
5. At the conclusion of an investigation, but before his finding is issued, the Officer shall review the results of the investigation with the City Administrator.
6. At the conclusion of an investigation the Officer may find:
 - a. The animal is not vicious and, if the animal is impounded and not quarantined for rabies evaluation, release the animal to its owner upon payment of any impoundment fees and expenses; or
 - b. The animal is dangerous and order the owner to comply with requirements that the Officer deems reasonable to control the dangerous behavior of the animal and, if the animal is impounded and not quarantined for rabies evaluation, release the animal to its owner upon payment of any impoundment fees and expenses; or
 - c. The animal is vicious and order the owner to comply with the requirements for vicious animals and, if the animal is impounded and not quarantined for rabies evaluation, release the animal to its owner within seven calendar days upon the owner providing proof of compliance and payment of any impoundment fees and expenses; or
 - d. The animal is unredeemably vicious and request a court of competent jurisdiction to order the animal to be

CITY OF HARRISBURG ORDINANCE #2019-06,
TO AMEND THE TITLE 5.02, ANIMAL REGULATIONS,
OF THE REVISED MUNICIPAL ORDINANCES

destroyed. The owner is responsible for payment of any impoundment fees and expenses and the costs for destroying the animal.

7. If the Officer cannot with due diligence locate the owner of an animal that has been impounded pursuant to this Section within seven calendar days (inclusive), or if the owner of the animal has been notified that the animal has been determined to be dangerous or vicious but has not secured the release of the animal within ten calendar days (inclusive) of notification (exclusive of the time of appeal to the City Council), then the Officer may cause the animal to be destroyed.

C. Notification of Finding that an Animal is Vicious.

1. The Officer shall notify the owner within three business days after concluding the investigation and issuing the finding concerning the animal's designation as a dangerous or vicious animal. This notification may be in person and/or by certified mail and shall provide the specific restrictions and conditions for keeping the animal if the animal has been found to be dangerous or for removing the animal from the City's jurisdiction if the animal has been found to be vicious. The notice shall inform the owner that he may request a hearing to contest the finding and shall contain instructions on how to appeal the finding. Such a request for hearing shall be filed in writing with the Finance Officer within seven calendar days (inclusive) of receipt of notification.
2. The Officer shall notify the complainant within three business days after concluding the investigation and issuing the finding concerning the animal's designation as a dangerous or vicious animal. This notification may be in person and/or by first class mail and shall provide the specific action to be taken if the animal has been found to be dangerous or vicious. The notice shall inform the complainant that he may request a hearing to contest the finding and shall contain instructions on how to appeal the finding. Such a request for hearing shall be filed in writing with the Finance Officer within seven calendar days (inclusive) of receipt of notification.
3. The Officer shall notify the Finance Officer and the Lincoln County Sheriff within three business days after concluding the investigation and issuing the finding concerning the animal's designation as a dangerous or vicious animal. The

CITY OF HARRISBURG ORDINANCE #2019-06,
TO AMEND THE TITLE 5.02, ANIMAL REGULATIONS,
OF THE REVISED MUNICIPAL ORDINANCES

notification shall describe the animal and specify any requirements or conditions placed upon the animal or owner.

4. Failure of either the owner or the complainant to request a hearing within the prescribed time shall result in the Officer's finding being a final determination.

D. Appeal of Finding.

1. The City Council shall have the authority to review findings made by the Officer. The City Council shall convene as it deems necessary to hear appeals from the Officer's findings.
2. If the owner or complainant files a written request as described in Section 50204.C, the Council shall hold a hearing, preferably at a regular Council meeting, not less than two nor more than ten business days after the day of receipt of the appeal. The purpose of the hearing shall be to uphold, overturn, or modify the Officer's finding. The Finance Officer, or her designee, shall provide notice of the date, time, and location of the hearing to the owner, the complainant, and the Officer a minimum of two calendar days prior to the hearing. The notification shall be made either in person, by first class mail, or by posting the notification upon the front door of the residence of the owner or complainant.
3. At the hearing, all interested persons shall be given the opportunity to present evidence on the issue of the finding. Criteria to be considered in the hearing shall be all relevant factors including, but not limited to, the severity of injury to the victim, statements from the victim and/or witnesses, previous aggressive history of the animal, observable behavior of the animal, the ability of the animal to inflict injury to another animal or person, previous incidents of a similar nature, and circumstances of the incident.
4. The City Council shall issue a determination upholding, modifying, or overturning the Officer's finding. This determination may be issued at the hearing or within three calendar days after the hearing.
5. A determination by the City Council upholding the finding that the animal is vicious shall subject the animal and its owner to the provisions of Section 5.0204.E. A determination that the animal is unredeemably vicious shall result in the animal

CITY OF HARRISBURG ORDINANCE #2019-06,
TO AMEND THE TITLE 5.02, ANIMAL REGULATIONS,
OF THE REVISED MUNICIPAL ORDINANCES

being destroyed no sooner than five calendar days after the hearing.

6. Failure of either the owner or the complainant to file an appeal to the Circuit Court within said five calendar days after the City Council's determination shall result in the Officer's finding being a final determination.

E. Removal of a Vicious Animal.

1. It is deemed a violation of these regulations, and is hereby declared to be a public nuisance, for any person to keep within the City's jurisdiction an animal found to be vicious after the date of the Officer's final determination.
2. It is deemed a violation of these regulations for any owner to possess an unredeemable vicious animal. All animals determined to be unredeemably vicious shall be destroyed.
3. It is deemed a violation of these regulations for any owner of a vicious animal to fail to comply with the requirements and conditions set forth in this Section. Any vicious animal found by an Officer to be in violation of this Section shall be immediately seized and destroyed.
4. Upon the third violation of this Section by one owner, the Finance Officer shall refuse to issue that owner any future Pet Licenses.

- F. Retroactivity. No animal may be declared to be a vicious animal based solely on the animal's activity prior to the effective date of these regulations. However, the activity, including but not limited to substantiated reports of bites or aggressive behavior, may be considered during an Officer's investigation.

R. Amend Chapter 5.0205.C to read:

An Officer who finds an animal to be inhumanely treated shall, pursuant to a warrant or court order, cause the animal to be impounded or otherwise properly cared for, and the expenses of such impoundment or care shall be a lien on the owner of the animal to be paid before the animal may be lawfully recovered. However, a warrant or court order is not necessary if the animal is severely injured, severely diseased, or suffering and any delay in impounding the animal would continue to cause the animal extreme suffering or if other exigent circumstances exist. If any abused or neglected animal is impounded or subjected to other action under these regulations without a court order, the

CITY OF HARRISBURG ORDINANCE #2019-06,
TO AMEND THE TITLE 5.02, ANIMAL REGULATIONS,
OF THE REVISED MUNICIPAL ORDINANCES

Officer shall subsequently show cause for the impoundment or other action to the court, and the court shall issue an order ratifying the impoundment or action or, if sufficient cause for the impoundment or action is not shown, the court shall order the return of the animal to the owner or other appropriate remedy.

S. Amend Chapter 5.0207.A to read:

An Officer or veterinarian may impound any animal found within the City's jurisdiction that is found to be in violation of these regulations. Said impoundment shall take place at a location and for a duration as ordered by the impounding officer.

T. Amend Chapter 5.0207.D to read:

Notice to Owner. An Officer or veterinarian who is impounding an animal shall notify, within twenty-four hours of an animal being impounded, the owner of said animal if his identity and location can be obtained by reasonable means.

U. Amend Chapter 5.0207.E to read:

Disposition of Impounded Animals.

1. An impounded animal wearing a license or bearing other means of identification shall be impounded for a period of five days, excluding Sundays and holidays and including the day of impoundment.
2. An impounded animal not wearing a license or bearing other means of identification shall be impounded for a period of three days, excluding Sundays and holidays and including the day of impoundment.
3. If the owner of any impounded animal shall fail to redeem such animal during the impoundment period, then any other person may, upon complying with the provisions of these regulations, redeem such animal from impoundment and be the lawful owner thereof.
4. An Officer or his designee may dispose of any impounded animal after the impoundment period by any humane means.
5. An Officer or his designee may dispose of any found or impounded animal that is sick or injured or is a feral cat without holding said animal for the entire impoundment period if the animal's condition is such that euthanization is the most humane manner to dispose of the animal.

V. Amend Chapter 5.0207.F to read:

CITY OF HARRISBURG ORDINANCE #2019-06,
TO AMEND THE TITLE 5.02, ANIMAL REGULATIONS,
OF THE REVISED MUNICIPAL ORDINANCES

Records. The Officer shall keep accurate records of the investigation, impounding, and disposition of all animals coming into his custody and the City Administrator or his designee shall keep an accurate record of all animal bites.

BE IT FURTHER ORDAINED by the City Council of the City of Harrisburg that this Ordinance shall become effective in accordance to law.

CITY OF HARRISBURG

ATTEST:

Mayor Julie Burke – Van Luvanee

Finance Officer Mary McClung

(SEAL)

First Reading: August 19, 2019
Second Reading: September 4, 2019
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