

ORDINANCE NO. 1365
AN ORDINANCE OF THE CITY COUNCIL
OF THE CITY OF ARCATA
PERTAINING TO VICIOUS, POTENTIALLY DANGEROUS AND PUBLIC NUISANCE DOGS

TITLE V – SANITATION & HEALTH
CHAPTER 2 – ANIMALS
ARTICLE 1 – DOGS

Section 1 – Title V (Sanitation & Health), Chapter 2 (Animals), Article 1 (dogs), Section 5201 (Definitions) is amended as follows:

SEC. 5201. Definitions.

Whenever in this Article the following terms are used, they shall be deemed and construed to have the meaning ascribed to them in this section, unless it is apparent from the context thereof that a different meaning is intended.

Animal Control Officer. The person charged by this Article with the administration and enforcement of the provisions hereof, and whose employment is provided for herein or otherwise by the City together with such deputies as may be allowed to the Animal Control Officer by the City Council. If this position is unfilled, the Animal Control officer shall be an assigned police officer.

Enclosure. “Enclosure” means a fence or structure suitable to prevent the entry of young children, and which is suitable to confine a vicious dog in conjunction with other measures which may be taken by the owner or keeper, such as tethering the dog within the enclosure. The enclosure shall be securely locked and have secure sides, top, and bottom sufficient to prevent the animal from escaping.

Hearing Entity/Officer. For the purpose of this Article the Hearing Entity or Officer shall be the City Manager’s appointee.

Impounded. Having been received into the custody of any Animal Control Officer.

Owner/Keeper. Any person keeping or harboring or having custody or control over any dog for fifteen consecutive days shall be deemed to be the owner of such dog within the meaning of this Article, except any veterinarian duly licensed and practicing as such, and having in his possession or control any dog for the purpose of treatment.

Owner or Keeper’s Property. For purposes of defining Potentially Dangerous, Vicious and Public Nuisance Dogs, the Owner or Keeper’s property includes that property over which the owner or keeper has the exclusive possession and use.

Potentially Dangerous Dog. “Potentially Dangerous Dog” means any of the following:

(a) Any dog which, when unprovoked, on two separate occasions within the prior 36-month period, engages in any behavior that requires a defensive action by any person to prevent bodily injury when the person and the dog are off the property of the Owner or Keeper of the dog.

(b) Any dog, which, when unprovoked, bites a person causing a less Severe Injury than as defined in this Section 5201.

(c) Any dog which, when unprovoked, on two separate occasions within the prior thirty-six (36) month period, has killed, seriously bitten, inflicted injury or otherwise caused injury attacking a domestic animal off of the property of the Owner or Keeper of the dog.

Public Nuisance Dog. “Public Nuisance Dog” means any dog which gives offense to human senses or substantially interferes with the rights of persons, other than its owner or keeper, to the enjoyment of life or property. The term shall include, but not be limited to, any dog which:

(a) On three (3) separate occasions within a thirty-six (36) month period has been cited, or Impounded for being off its Owner or Keeper’s Property in violation of any state or local law prohibiting the running at large of dogs.

(b) Causes damage to the property of anyone other than its Owner or Keeper.

(c) Harasses or intimidates persons on public property or private property other than owned or under the control of its Owner or Keeper.

(d) Repeatedly chases vehicles that are not on its Owner or Keeper’s Property.

(e) Makes disturbing noises such as barking, howling, whining, or other utterances to the annoyance, disturbance, or discomfort of neighbors or others in the vicinity of the property where the dog is maintained.

(f) Has been allowed by its Owner or Keeper to produce odors which annoy, disturb or cause discomfort to persons in the vicinity of the property where the dog is maintained.

(g) Is one of a number of dogs or other animals maintained on the property owned or controlled by its Owner or Keeper so as to be offensive to persons or dangerous to the public health, safety or welfare.

(h) Has, when unprovoked, bitten any person who is lawfully on the Owner or Keeper’s Property causing minor injury.

Severe Injury. “Severe injury” means any physical injury to a human being that results in muscle tears, or disfiguring lacerations or requires multiple sutures or corrective cosmetic surgery.

Unlicensed Dog. Any dog for which the license tax for the current year as provided in this Article has not been paid, or any dog to which the tag provided for in this Article is not attached.

Vicious Dog.

“Vicious dog” means any of the following:

(a) Any dog owned or harbored for the purpose of dog fighting; or

(b) Any dog seized under Section 599aa of the Penal Code and upon sustaining of a conviction of the Owner or Keeper under subdivision (a) of Section 597.5 of the Penal Code.

(c) Any dog which, when unprovoked, in an aggressive manner inflicts Severe Injury or kills a human being.

(d) Any dog previously determined and currently listed as a Potentially Dangerous Dog, which, after its Owner or Keeper has been notified of this determination continues the behavior defined as Potentially Dangerous or is maintained in violation of this Article.

Section 2. Title V (Sanitation & Health) Chapter 2 (Animals), Article 1 (dogs), Sections 5203 (Investigation) and 5204 (Destruction) are hereby repealed.

Section 3. Title V (Sanitation & Health) Chapter 2 (Animals), Article 1 (dogs), Section 5201 (Findings Regarding Potentially Dangerous, Vicious and Public Nuisance Dogs), 5203 (Procedure for Declaring a Dog Potentially Dangerous, Vicious or a Nuisance), 5204 (Disposition of Potentially Dangerous, Vicious or Nuisance Dogs), 5205 (Removal from List), 5206 (Penalties) are hereby adopted as follows:

SEC. 5202. Findings and Declarations.

The City Council finds and declares the following:

(a) Potentially dangerous and vicious dogs have become a serious threat to the safety and welfare of the citizens of the City and nuisance dogs present a threat to the peace and quiet of the City.

(b) The number and severity of unprovoked attacks by potentially dangerous and vicious dogs have increased and have resulted in serious injuries to numerous individuals, including injury and death to other domestic pets.

(c) The failure of owners of such potentially dangerous and vicious dogs to properly confine or control their animals is the primary cause of the increased incidence of attacks upon persons and other animals and the disturbance of the peace and quiet of the City.

(d) The necessity for the regulation and control of vicious, potentially dangerous and public nuisance dogs is a City problem, requiring City regulation, and existing City ordinances are inadequate to deal with this threat to the public health and safety posed by vicious, potentially dangerous and public nuisance dogs.

SEC. 5203. Procedure for Declaring a Dog Potentially Dangerous, Vicious or a Nuisance.

If an Animal Control Officer or a law enforcement officer has investigated and determined that there exists probable cause to believe that a dog is potentially dangerous, vicious or a nuisance, the Animal Control Officer, or his or her designee, shall petition the Police Chief, or his or her appointee, for a hearing for the purpose of determining whether or not the dog in question should be declared Potentially Dangerous, Vicious, or a Public Nuisance. Whenever possible, any complaint received from a member of the public which serves as the evidentiary basis for the animal control officer or law enforcement officer to find probable cause shall be sworn to and verified by the complainant and shall be attached to the petition. The Police Chief or his or her designee shall notify the Owner or Keeper of the dog that a hearing will be held by the City, at which time he or she may present evidence as to why the dog should not be declared Potentially Dangerous, Vicious, or a Public Nuisance. Said evidence may be offered either written or oral by the Owner of the dog or any interested citizen, including Animal Control Officers, humane officers or peace officers, and shall be sworn to and/or signed under declaration of penalty of perjury.

SEC. 5203.1. Notice of Hearing, Determination.

The Owner or Keeper of the dog shall be served with notice of the hearing and a copy of the petition, either personally or by first-class mail with return receipt requested. The hearing shall be held promptly within no less than five (5) working days nor more than ten (10) working days after service of notice upon the owner or keeper of the dog. The hearing shall be open to the public. The Hearing Entity may admit into evidence all relevant evidence, including incident reports and the affidavits of witnesses, limit the scope of discovery, and may shorten the time to produce records or witnesses. The Hearing Entity may find, upon a preponderance of the evidence, that the dog is Potentially Dangerous, Vicious, or a Public Nuisance, and make other orders authorized by this Article.

SEC. 5203.2. Notice of Determination.

After the hearing conducted pursuant to Section 5203.1, the Owner or Keeper of the dog shall be notified in writing of the determination and orders issued, either personally or by first-class mail postage prepaid by the Hearing Entity. If a determination is made that the dog is Potentially Dangerous, Vicious, or a Public Nuisance, the Owner or Keeper shall comply with the provisions of this Article in accordance with a time schedule established by the Chief of Police or his or her designee, but in no case more than thirty (30) days after the date of the determination or thirty-five (35) days if notice of the determination is mailed to the Owner or Keeper of the dog.

SEC. 5203.3. Appeal.

If the petitioner or the Owner or Keeper of the dog contests the determination of the Hearing Entity, he or she may, within five (5) days of receipt of the notice of determination, appeal the decision of the Hearing Entity to the Humboldt County Superior Court pursuant to Food and Agricultural Code § 31622. The party seeking the appeal shall serve personally or by first-class mail, postage prepaid, notice of the appeal upon the other party within two (2) days of the filing of the notice of appeal.

SEC. 5203.4. Effect of Failure to Appear at Hearing.

The Hearing Entity may decide all issues for or against the Owner or Keeper of the dog even if the Owner or Keeper fails to appear at the hearing.

SEC. 5203.5. Finality of Appeal.

The determination of the court hearing the appeal shall be final and conclusive upon all parties.

SEC. 5203.6. Seizure and Immediate Impoundment – Threat to Safety.

If upon investigation it is determined by the Animal Control Officer or law enforcement officer that probable cause exists to believe the dog in question poses an immediate threat to public safety, the Animal Control Officer or law enforcement officer may seize and impound the dog pending the hearing or determination provided for in Sections 5203.1 and 5203.2. The Owner or Keeper of the dog shall be liable to the City for the costs and expenses of keeping the dog if the dog is later determined to be Potentially Dangerous or Vicious. If public safety is adequately assured, the Animal Control Officer may permit the dog to be confined at the owner's expense in an approved kennel or veterinary facility or on the Owner's premises.

SEC. 5203.7. When Dogs May not be Declared Potentially Dangerous, Vicious or Public Nuisance.

(a) No dog may be declared Potentially Dangerous, Vicious, or a Public Nuisance if any injury or damage is sustained by a person who, at the time of the injury or damage was sustained was committing a willful trespass or other tort upon premises occupied by the Owner or Keeper of the dog, or was teasing, tormenting, abusing or assaulting the dog, or was committing or attempting to commit a crime. No dog may be declared Potentially Dangerous, Vicious or a Public Nuisance if the dog was protecting or defending a person within the immediate vicinity of the dog from an unjustified attack or assault. No dog may be declared Potentially Dangerous, Vicious or a Public Nuisance if an injury or damage was sustained by a domestic animal which at the time the injury or damage was sustained was teasing, tormenting, abusing or assaulting the dog.

(b) No dog may be declared Potentially Dangerous, Vicious or a Public Nuisance if the injury or damage to a domestic animal was sustained while the dog was working as a hunting dog, herding dog, or predator control dog on the property of or under the control of, its Owner or Keeper, and the damage or injury was to a species or type of domestic animal appropriate to the work of the dog.

SEC. 5204.1. Disposition of Potentially Dangerous or Vicious Dogs.

(a) All dogs which have been determined by the Hearing Entity to be Potentially Dangerous Dogs or Vicious Dogs shall be properly licensed and vaccinated. The status of the dog shall be included in the licensing records either after the Owner or Keeper has agreed to the designation or the Hearing Entity has determined the designation applies to the dog. An additional fee of twice the applicable license fee shall be charged for maintaining this additional information in the records.

(b) A Potentially Dangerous or Vicious dog while on the Owner or Keeper's Property, shall, at all times, be kept indoors, or in an Enclosure as defined in Section 5201. A Potentially Dangerous Dog may be off the Owner or Keeper's Property only if it is restrained by a substantial leash or within an enclosed vehicle. A Vicious Dog may be off the Owner or Keeper's Property if the Owner or Keeper complies with Section 5204.2(g) of this Article.

(c) The Owner or Keeper of a Potentially Dangerous or Vicious Dog shall notify the Animal Control Officer, in writing, within two (2) working days if the dog in question dies, is sold, transferred or permanently removed from the City.

(d) Owners or Keepers of Potentially Dangerous or Vicious Dogs shall notify in writing any person to whom the dog is sold that the dog is Potentially Dangerous or Vicious.

SEC. 5204.2. Disposition of Vicious Dogs.

In addition to the dispositions in Section 5204.1, upon a determination by the Hearing Entity that a dog is a Vicious Dog the following shall apply:

(a) A dog which has been determined to be Vicious shall not be licensed unless the Owner or Keeper of the Vicious Dog is 18 years of age or older and meets the following requirements:

- (1) Provides proof to the Animal Control Officer that the Owner or Keeper has procured liability insurance in the amount of at least one hundred thousand dollars (\$100,000) covering any damage or injury which may be caused by the Vicious Dog during the 12-month period for which the licensing is sought.

(b) The Owner or Keeper shall, at his or her own expense, and within two (2) working days of receipt of notice of determination that the dog is Vicious provide the Animal Control Officer with two current color photographs of the dog which show the animal in a standing position.

(c) The Owner or Keeper shall display a sign that visually depicts a menacing dog on his or her property warning that there is a Vicious Dog on the property. The sign shall be visible to the general public and approved by the Animal Control Officer.

(d) The Owner or Keeper of a Vicious Dog shall certify under penalty of perjury to all of the following:

(i) The Owner or Keeper shall maintain and not voluntarily cancel the liability insurance required by this section during the period for which licensing is sought, unless the Owner or Keeper shall cease to own or keep the dog prior to the expiration of that license.

(ii) The Owner or Keeper shall, on or before the effective date of the license for which application is being made, have an approved Enclosure for the dog on all property where the Vicious Dog will be kept or maintained.

(iii) The Owner or Keeper shall notify the Animal Control Officer immediately upon discovery if the Vicious Dog is running at large, is unconfined, has attacked another domestic animal or has attacked a human being, has died, has been sold, or transferred, or has been permanently removed from the City. Immediately upon discovery shall mean as soon as practicable taking into consideration the circumstances, but in no event later than twenty-four (24) hours after the occurrence or the next working day in which the Police Department is open.

(iv) If the Vicious Dog is sold, the Owner or Keeper shall provide the Animal Control Officer with the name, address, and telephone number of the new Owner or Keeper. It shall be unlawful to sell or give away a dog previously determined to be Vicious unless the Owner or Keeper of the dog advises the new Owner or Keeper of the status of the dog in writing.

(e) All dogs determined to be Vicious shall be confined in an Enclosure as defined in Section 5201. It is unlawful for any Owner or Keeper to maintain a Vicious Dog upon any property which does not have an Enclosure.

(f) It is unlawful for any Owner or Keeper to allow any Vicious Dog to be outside of the Enclosure unless it is inside the dwelling of the Owner or Keeper or it is necessary for the Owner or Keeper to obtain veterinary care for the dog, to sell or give away the dog, or to comply with any directive of the Animal Control Officer with respect to the dog.

(g) In any case where a Vicious Dog is lawfully outside the Enclosure, except in cases where it is inside the dwelling of the Owner or Keeper, the dog shall be securely muzzled and restrained, with a leash sufficient to restrain the dog, having a minimum tensile strength of 300 pounds and not exceeding three feet in length, and the dog shall be under the direct control and supervision of its Owner or Keeper.

(h) The Hearing Entity may impose any additional conditions upon the ownership of the dog that protect the public health, safety and welfare.

SEC. 5204.3. Procedure for Destruction of Vicious Dogs.

(a) A dog determined to be Vicious may be destroyed by the Police Department when it is found, after proceedings conducted under Sections 5203.1 and 5203.2, that the release of the dog would create a significant threat to the public health, safety, and welfare; or

(b) An Owner of a dog which has previously been determined to be a Vicious Dog violates the provisions of this Article relating to the keeping of Vicious Dogs; or

(c) A dog which has previously been determined to be a Vicious Dog, when unprovoked, attacks, wounds, bites, or otherwise injures or kills any person.

(d) A dog shall not be destroyed pursuant to sections (b) or (c) above without a hearing pursuant to Sections 5203.1 and 5203.2.

SEC. 5204.4. Ownership of Vicious Dogs Prohibited.

The Owner of a dog determined to be a Vicious Dog may be prohibited by the Animal Control Officer from owning, possessing, controlling, or having custody of any dog for a period of up to three (3) years, when it is found, after proceedings conducted under Sections 5203.1 and 5203.2, that ownership or possession of a dog by that person would create a significant threat to the public health, safety, and welfare.

SEC. 5204.5. Disposition of Public Nuisance Dogs.

(a) No person shall keep or maintain any dog in such a manner as to cause or permit the dog to be a Public Nuisance Dog.

(b) No Owner or Keeper of a dog shall fail to abate a nuisance created by the keeping of such dog when ordered to do so by the Animal Control Officer or other peace officer employed by the City.

(c) The Hearing Entity may impose any reasonable conditions upon the ownership of the dog which shall correct the circumstances which created the nuisance.

(d) Any dog having been declared to be a Public Nuisance Dog pursuant to the provisions of Sections 5203.1 and 5203.2 shall be delivered to the Animal Control Officer for Impoundment until such time as the Owner or Keeper shall have satisfied the Animal Control Officer that he or she has taken steps to abate the nuisance created by the keeping of the dog. Failure to take such steps to the satisfaction of the Animal Control Officer within five (5) working days following impoundment of the dog and notice of the conditions for release imposed by the Animal Control Officer shall result in forfeiture of ownership of said dog.

(e) No dog may be euthanized or otherwise disposed of if the Owner or Keeper of the dog has sought judicial review of the determination that the dog was a Public Nuisance Dog until that review has been completed. The Owner or Keeper of the dog shall be liable for the cost of the care and feeding of the dog pending the outcome of the judicial review and shall deposit monthly in advance the cost of such care and feeding as determined by the Animal Control Officer. Failure to make such a deposit shall result in forfeiture of ownership of said dog after giving the Owner or Keeper of the dog five (5) days written notice of his or her failure to make the required deposit in advance. In the event the judicial review is favorable to the Owner or Keeper of the dog, the amounts paid for the care and feeding of the dog pending the judicial review shall be refunded.

SEC. 5205. Removal From List.

If there are no additional instances of the behavior defined by this Article in Section 5201 as Potentially Dangerous or Public Nuisance Dogs within a thirty-six (36) month period from the date of designation as a Potentially Dangerous or Public Nuisance Dog, the dog shall be removed from the list of Potentially Dangerous or Public Nuisance Dogs. The dog may, but is not required to be, removed from the lists of Potentially Dangerous or Public Nuisance Dogs prior to the expiration of the thirty-six (36) month period if the Owner or Keeper of the dog demonstrates to the Animal Control Officer that changes in circumstances or measures taken by the Owner or Keeper, such as training of the dog, have mitigated the risk to the public safety.

SEC. 5206. Penalties.

(a) Any violations of this Article relating to Vicious or Potentially Dangerous dogs may be prosecuted as either a misdemeanor or infraction.

(b) Any violation of this Article relating to Public Nuisance Dogs shall be an infraction.

Section 4. This Ordinance shall be effective 30 days after its adoption.

DATE: August 15, 2007

ATTEST:

/s/ Michael Hackett
City Clerk, City of Arcata

APPROVED:

/s/ Harmony Groves
Mayor, City of Arcata

Clerk's Certificate

I hereby certify that the foregoing is a true and correct copy of Ordinance No.1365, passed and adopted at a regular meeting of the City Council of the City of Arcata, Humboldt County, California on the 15th day of August, 2007, by the following vote:

AYES: GROVES, WHEETLEY, MACHI, PITINO, STILLMAN

NOES: NONE

ABSENT: NONE

ABSTENTIONS: NONE

/s/ Michael Hackett
City Clerk, City of Arcata