

ORDINANCE NO. 2015-08

AN ORDINANCE PROVIDING FOR ANIMAL CONTROL REGULATIONS AND GENERAL PROVISIONS REGARDING ANIMALS, PROVIDING PENALTIES FOR THE VIOLATION THEREOF, ABOLISHING ORDINANCES NO. 08-11 AND 04-24, AND FOR OTHER PURPOSES

WHEREAS, the Malvern City Council deems it advisable to enact new animal control measures for the city, and to provide penalties for the violation thereof, and

WHEREAS, these proposed animal control measures should include provisions for animals at large, licensure of animals, impounding procedures, animals causing a nuisance, and provisions concerning animal cruelty, and

WHEREAS, the currently enacted animal ordinance should be repealed as part of a comprehensive overhaul of city animal control provisions.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MALVERN, ARKANSAS:

SECTION 1: DEFINITIONS

The following words and phrases have the following meanings for the purposes of this ordinance:

(a) Animal: Every vertebrate non-human species of animal, wild or domestic, male or female, including, but not limited to, dogs, cats, livestock and other mammals, birds, reptiles, amphibians and fish.

(b) Animal control officer: Any person appointed by the Chief of Police to perform duties as assigned by the Chief of Police to effectuate this Ordinance.

(c) Animal Shelter: Any premises with a written agreement with the city for the purpose of effectuating this Ordinance and used as a shelter for seized, stray, homeless or abandoned animals. It matters not whether the shelter is owned by the City and operated under the supervision of the Chief of Police or whether it is owned and operated by a humane society, animal welfare group or other designated shelter which has a written contractual agreement with the City.

(d) Arkansas Rabies Rules and Regulations: All rules and regulations promulgated by the Arkansas Department of Health, and any and all state law pertaining to or concerning rabies control in animals.

(e) At large: Any animal not confined to the premises of the owner, possessor, person keeping or person otherwise responsible for an animal or not under the control of a person when not on the premises of the owner, possessor, person keeping or person otherwise responsible for an animal.

(f) Cat: A member of the feline species (*felis catus* or *felis domesticus*).

(g) Dog: A member of the canine species and any wolf or wolf-dog hybrid.

(h) Owner: Any person or entity owning, keeping or harboring an animal within the City.

(I) Chief of Police: The Chief of Police of Malvern, Arkansas.

(j) Vaccination: The injection of an anti-rabies vaccine in the manner and frequency set forth in state law and administered by a licensed veterinarian.

SECTION 2: THE ANIMAL CONTROL OFFICER

(a) Appointment and Duties. The provisions of this Ordinance shall be enforced by the Animal Control Officer. The Animal Control Officer shall be that person or persons designated by the Chief of Police to operate in such capacity. The Animal Control Officer is hereby authorized to issue citations pursuant to the Arkansas Rules of Criminal Procedure to any person the officer has reasonable cause to believe has violated any provisions of this Ordinance.

(b) Records and Record keeping. The Animal Control Officer shall complete and keep records of all animals reported for violations and impoundment.

SECTION 3: LICENSING

(a) All dogs and cats three (3) months old or older in the City must be licensed annually. For any dog or cat brought into the city, the owner shall, within thirty (30) days, have the dog or cat licensed by paying the applicable license fee. All licenses issued shall be valid for a period of one (1) year. The owner shall have ten (10) days from the date of expiration of a license to obtain a new license without penalty. No City license shall be issued without a rabies certificate issued by a licensed veterinarian.

1. Exceptions.

a. Certified service animals, such as dogs for the assistance of the blind or deaf, shall not be required to pay an annual city license fee, but shall be granted a license free of charge upon proof of an annual rabies vaccination and certification of the dog's training as a service dog.

(b) Licenses shall consist of a metal tag which shall be affixed to the animal's collar when the animal is outside of the owner's home or other interior structure. The Building and Permit Department shall issue the metal tag stamped with an identifying number.

(c) Licenses are non-transferable and non-refundable.

(d) Fees for Annual License.

1. For any spayed or neutered animal, the annual license fee shall be \$5.00.

2. For any animal that has not been spayed or neutered, the annual license fee shall be \$50.00.

3. For any animal, trained and certified as a service animal, such as a dog used for the assistance of the blind or deaf, whether or not spayed or neutered, shall not be required to pay a fee to obtain an annual license, but proof of annual rabies vaccination shall be presented before an annual license may be obtained.

(e) Licenses may be obtained from the city through any method developed by city administration for the selling and disbursement of licenses, including, but not limited to, in person at city offices, via mail, via internet, or through participating veterinarian offices.

(f) A duplicate license may be obtained upon payment of a five dollar (\$5.00) replacement fee.

(g) Persons who fail to obtain a license as required within the time period specified in this section shall be subject to a fine of one hundred forty-five dollars (\$145.00).

(h) The Building and Permit Department shall maintain a record of the identifying numbers on all licenses issued. A copy of the list shall be forwarded to the animal control officer on a monthly basis.

(I) The application for License shall contain the name and address of the applicant, a description of the animal, and a current rabies certificate.

SECTION 4: RABIES VACCINATION REQUIRED

All animals that are subject to contracting rabies shall be vaccinated against rabies by a licensed veterinarian in accordance with Arkansas law.

SECTION 5: ANIMALS RUNNING AT LARGE

No person owning, possessing, keeping, or otherwise responsible for an animal shall allow it to run at large.

SECTION 6: METHODS OF CONFINEMENT OF ANIMALS

(a) Any person owning, possessing, keeping or otherwise responsible for a dog shall confine such dog within a fence or enclosure of adequate construction for such purpose, within a structure, or shall confine such animal by a chain or cable affixed to the animal's collar and attached to some immovable object. An animal must be provided adequate food and water. Any area where a dog is confined must be free of debris or other obstructions which may cause the animal to become entangled or injured.

In no event shall any device be used which operates to choke a dog (choke chain).

(b) When an animal is confined by chain or cable, the restraint must be at least ten (10) feet long on a center pivot or fifteen (15) feet long on an anchored point and so placed as to prevent the animal leaving the property, as well as to provide adequate room for normal postural adjustments and for exercise. Any area where the animal is confined in such manner must drain so that the animal is not confined to an area of standing water. Any chain or cable shall not exceed 1/4 of the animal's total body weight. Any chain used shall not be larger than .5 inch link, measured from outside to outside of the link. No chain or cable shall be wrapped around the neck of an animal. All chains or cables shall be affixed to a collar on the animal.

(c) All animals must be provided adequate shelter from weather and temperature extremes and from any other potential hazards.

(d) No animal may be confined on any public property or public place and left unattended.

(e) Voice control methods may be used on dogs while they are on the property of the owner, possessor, keeper or person otherwise responsible for the dog.

All dogs off of the property of the owner, possessor, keeper or person otherwise responsible for the dog, must be restrained by leash and collar or harness.

(f) All premises where animals are kept shall not become a threat to the public health by the owner, possessor, keeper, or person otherwise responsible for the animal due to the failure to diligently remove animal waste. Premises where animals are kept shall be kept in a clean and sanitary condition free from excessive refuse or waste.

(g) Every female animal in heat shall be confined in a building or secure enclosure in such a manner that such female animal cannot come into contact with another animal except for planned breeding.

SECTION 7: GENERAL PROVISIONS

(a) **Diseased or Injured Animals.** No person shall knowingly keep any injured animal without providing proper treatment for such injury. No person shall knowingly keep an animal infected with a communicable disease which may be a health hazard to humans or other animals. A person acts “knowingly” when he is aware that such circumstances exist.

(b) **Abandonment.** No person shall abandon any animal.

(c) **Transportation of Animals.** No person shall transport or cause to be transported any animal in a motor vehicle or trailer unless the animal is enclosed within the vehicle, or enclosed in a portable kennel, crate, or box designed for said purpose. Dogs may be transported in the open bed of a pick up truck provided the dog is humanely secured by means of a cross tether, harness, or both. The transportation of animals by motor vehicle shall be such that the animal may not fall from, be thrown out of, or jump from the motor vehicle or trailer.

(d) No person shall fail to provide his/her animal with sufficient good and wholesome food and water, proper shelter and protection from the elements, veterinary care when needed to prevent suffering, and with humane care and treatment.

(e) No person shall expose any known poisonous substance, whether mixed with food or not, so that the same shall be liable to be eaten by an animal, provided that it shall not be unlawful for a person to expose on his property common rat poison for the extermination of vermin.

(f) No person shall confine a number of animals that results in any one animal being deprived of sufficient good and wholesome food and water, proper shelter and protection from the elements, veterinary care when needed to prevent suffering, and with humane care and treatment. If the number of animals results in any one animal being deprived sufficient good and wholesome food and water, proper shelter and protection from the elements, veterinary care when needed to prevent suffering, and with humane care and treatment, all animals in the persons care may be impounded by the animal control officer. If the animals are impounded pursuant to this subsection, the owner shall be assessed a fee of five dollars (\$5.00) per day for the care of the animals by the animal shelter.

(g) A person shall not enclose more than one animal per enclosure. An enclosure is defined as an area containing 100 square feet of unobstructed movement for one animal.

SECTION 8: ANIMAL CRUELTY

No person shall subject any animal to cruelty or cruel neglect. For purposes of this section, “cruelty” or “cruel neglect” shall have the same meaning as in the Arkansas Criminal Code. Arkansas Criminal Code Annotated Section 5-62-103 et seq. Is hereby adopted by the City of Malvern as set out word for word.

SECTION 9: IMPOUNDMENT.

(a) Any animal found to be at large within the city, a nuisance dog, or a cat found to be at large within the city may be picked up by the Animal Control Officer and impounded in the Animal Shelter and there confined in a humane manner. Impounded animals may be kept for up to ten (10) business days, if room permits. Animals which are not claimed by their owners or an authorized representative identified in writing by the owner within five (5) days shall become property of the city and shall be placed for adoption, after the expiration of ten (10) days, if not reclaimed or adopted, the animal may be euthanized at the discretion of the Animal Control Officer in a humane manner.

(b) Prior to the euthanization of any animal found running at large, where the animal carries its owner's address, by virtue of tag, collar, or microchip, the Animal Control Officer shall give the animal's owner at least seven (7) days' notice of the date of the proposed destruction of the animal. This notice shall be sent by certified mail, return receipt requested, and shall otherwise conform to Ark. Code Ann. Section 14-54-1102.

(c) The owner of an impounded animal who refuses to claim his animal shall be deemed to have abandoned the animal in violation of this Ordinance and a Citation may be issued.

(d) Upon impounding an animal, the Animal Control Officer shall take reasonable steps to notify the owner of the animal so impounded, and inform him of the condition whereby they may regain custody of such animals. Failure of the Animal Control Officer to give actual notice to an animal owner shall not preclude the Animal Control Officer or the Animal Shelter from taking any action stated in this section.

(e) Any person desiring to adopt an animal from the animal control shelter may apply through the adoption process as set forth by the Animal Control Officer.

(f) Any animal having rabies, or which may have rabies, shall be immediately released by the owner to the police or animal control officer of the City of Malvern, for disposal or confinement in the animal control shelter or in a veterinary hospital approved by the police or animal control officer. Such animal shall be immediately and securely confined and kept under the supervision of the animal control officer for a period of ten (10) days. Any expense for confinement, medical treatment and veterinary services shall be borne by the owner of the animal.

(g) Any person that resides within the city of Malvern that relinquishes their animal(s) for adoption shall pay a fee of twenty dollars (\$20.00) and sign a relinquishment form. The relinquishment becomes final immediately upon signing of the form and the animal(s) becomes property of the city of Malvern.

SECTION 10: RECLAMATION OF ANIMAL(S) IMPOUNDED BY THE CITY/FEEES FOR RECLAIMING

(a) Reclamation:

1. For any animal reclaimed by a resident of the City, there shall be no fee assessed for reclamation of said animal for the first impoundment if the animal is licensed by the City. For any second impoundment of an animal reclaimed by a resident of the City, no animal may be reclaimed without first providing proof that the animal has been licensed by the City and paying a reclamation fee of \$25.00 and \$5.00 for each day of impoundment. For any third or subsequent impoundment of an animal reclaimed by a resident of the City, no animal may be reclaimed without first providing proof that the animal has been licensed by the City and paying a reclamation fee of \$75.00. For any animal not licensed, a fee of \$10.00 shall be paid, in addition to the cost of the license even on the first impoundment. The burden of proving licensure shall be the responsibility of the person attempting to reclaim the animal.

2. For any animal reclaimed by a resident of Hot Spring County, outside the city limits, said person shall pay a reclamation fee of \$30.00 for the second and every subsequent impoundment and provide proof of rabies vaccination.

3. For any animal reclaimed by a non-resident of the City or Hot Spring County, said person shall pay a reclamation fee of \$75.00 for the second and every subsequent impoundment and provide proof of rabies vaccination.

4. Any fees described in this section are in addition to fines or other penalties imposed by a court of law for violation of this Ordinance.

(b) Record Keeping/Manner of Collection

1. Complete and accurate records of all animals impounded along with owner identification, when determined, shall be kept.

2. The Mayor, by contract or otherwise, may provide a method for the orderly collection of fees required by this section.

SECTION 11: NUISANCE ANIMALS

(a) No person shall own, possess, keep or otherwise be responsible for an animal which causes a nuisance. An animal creates a nuisance when it infringes upon the rights of another animal or person, or:

1. Molests passersby or passing vehicles
2. Attacks other animals
3. Trespasses on school grounds
4. Is at large on more than one occasion within a three (3) month period.
5. Damages property
6. Barks, whines, or howls in an excessive, continuous, or untimely fashion.
7. Causes fouling of the air by odor and thereby creates unreasonable annoyance.
8. Interferes with trash collection or other service personnel, including, but not limited to, meter readers or letter carriers.
9. Defecates on property of a person other than the owner, possessor, keeper or person otherwise responsible for the animal, including, but not limited to parks and trails. It shall not be a violation of this subsection if the owner, possessor, or person otherwise responsible for the animal promptly removes the waste.
10. Is in heat.
11. Is tethered to an object which allows it to cross onto the adjoining property of another.
12. It is tethered to obstruct metered service reading or entry by law enforcement.

(b) For purposes of this section, each day that a violation occurs shall be considered a separate offense, punishable separately.

(c) The fine for a Nuisance Animal, as defined in this section, shall be \$145.00 for the first offense, and \$290.00 for each subsequent offense that shall occur within a twelve (12) month period.

(d) Restitution shall be the cost of the damage caused by the animal.

SECTION 12: VICIOUS DOGS—REQUIREMENTS FOR UPKEEP

(a) A dog is a vicious dog for purposes of this section when it, according to the records of the Animal Shelter, Animal Control Officer, or the Police Department:

1. Causes death, serious physical injury or physical injury to a person. For purposes of this subsection “serious physical injury” and “physical injury” shall have the same meanings as provided in the Arkansas Criminal Code, or

2. Attacks or attempts to bite or bites a person without provocation. For purposes of this subsection "attack" means to charge at a person and make physical contact with a person in an aggressive manner while not being provoked, whether or not the dog actually bites the person, or

3. While off the property of the owner, possessor, keeper or person otherwise responsible for the dog, and without provocation, kills or injures another animal, or

4. Engages in dog fighting or is owned, kept or trained for the purpose of dog fighting.

(b) A vicious dog:

1. Must be maintained within a keyed or padlocked kennel or pen.

2. Must be kept on a leash no longer than four feet of a substantial strength to keep the animal from breaking loose by a person eighteen (18) years of age or older, who is physically able to control the leash and can physically control the animal. At no time may a vicious animal be used to block access to a residence.

3. Must be maintained on property which contains a sign, readable by the public, which states "Beware of Vicious Dog". An additional identical sign shall be affixed to the pen or kennel of the dog.

4. Must be securely confined indoors or in a securely enclosed kennel, except when leashed and muzzled as provided above. The pen, kennel or structure must have secure sides and a secure top, which is attached to the sides. All structures used must be locked with a key or combination lock when the animals are within the structures. The pen or kennel must have a secure bottom or floor attached to the sides of the pen or the sides of the pen must be embedded in the ground at a depth of no less than two (2) feet. All structures used to house vicious dogs must also comply with all zoning and building regulations of the city. Kennels must be adequately lighted and ventilated and be kept in a clean and sanitary condition. When confined indoors, no vicious dog may be kept on a porch, patio or in any part of a house or building that would allow the dog to exit on its own volition unless to a kennel or fenced back yard.

In addition no such animal may be kept in a building when the windows are open or when screen windows or screen doors are the only obstacles preventing the dog from exiting the structure unless they exit to the proper enclosure.

(c) All owners, possessors, keepers or persons otherwise responsible for a vicious dog, must, within ten (10) days of meeting the requirements of being a vicious dog, provide to the City proof of liability insurance for each vicious dog in a single incident amount of \$100,000 for bodily injury or death of any person or damage to any property owned by any person which may be caused by the vicious dog. The insurance policy shall provide that no cancellation shall be made without ten (10) days written notice being provided to the City clerk.

(d) All owners, possessors, keepers or persons otherwise responsible for a vicious dog must, within ten (10) days notify the Animal Control Officer, in writing, of any of the following:

1. The death of the vicious dog.

2. The removal of the vicious dog from the City of Malvern

3. The new address where the vicious dog is located if the vicious dog is moved within the city.

4. The sale or other transfer of ownership of the vicious dog, including the date of sale, the person to whom the vicious dog has been transferred, and if the person

to whom the vicious dog has been transferred resides within the City of Malvern, the address of the person.

(e) A vicious dog may, in addition to any other penalty, be ordered destroyed by a court of competent jurisdiction if said animal has caused serious physical injury or death to a person. Furthermore, the owner, possessor, keeper or person otherwise responsible for the dog may be ordered to pay restitution to any victim.

(f) The owner, possessor, keeper or person otherwise responsible for a dog which commits any of the acts delineated in subsection 1 of this section, shall be deemed guilty of a misdemeanor, and shall be liable for restitution to the victim of any violation.

(g) Under no circumstances may a vicious dog be abandoned or destroyed by the owner outside the city limits. A person in violation of this subsection shall be subject to a fine of five hundred dollars (\$500.00).

SECTION 13: CONDITION OF ANIMAL PEN AND PREMISES GENERALLY

Persons owning, possessing, keeping or otherwise responsible for an animal shall keep the premises where such animal is kept clean, free from offensive odors, and not a threat to public health.

SECTION 14: ROADSIDE SALE OF ANIMALS

No animal may be sold on the roadside in the City of Malvern, including any street or highway right of way appurtenant thereto.

SECTION 15: CITATIONS AND PENALTIES

(a) The Animal Control Officer, under the supervision of the Chief of Police, is hereby authorized to issue a citation as defined by the Arkansas Rules of Criminal Procedure to the owner, possessor, keeper, or person otherwise responsible for an animal violating any provision of this Ordinance. The citation shall be in a form as approved by the District Court of Malvern, Arkansas. Said citation shall designate the offense committed and shall require the person so charged to appear before the District Court of Malvern, Arkansas to answer the charges therein contained or present said citation at the District Court of Malvern, Arkansas prior to said court date for disposition. Should a physical arrest be required for any offense, the Animal Control Officer shall seek the assistance of the Patrol Division of the Malvern Police Department to effectuate said arrest.

(b) in addition to, or in lieu of, impounding an animal found at large, a police officer or the animal control officer are authorized for violation of any portion of this Ordinance to give the owner of the offending animal a Notice to Appear in the District Court of Malvern, Arkansas. Such Notice shall state the name and address of the owner and the date of the violation and contain a statement by a police officer or the animal control officer of the nature of the violation. The Notice shall contain a statement in which the person /owner promises to appear in Malvern District Court without issuance of a Warrant or other process and which statement shall be signed by the person/owner. Upon failure to sign the agreement to appear, an officer shall swear out a complaint and the usual procedure upon the filing of complaints in the District Court shall govern the arrest and trial of the person/owner. Upon the person/owner's signing the agreement

to appear and his/her appearance as set out in the Notice, no warrant shall be issued for the person/owner.

(c) Any person violating any portion of this Ordinance shall be deemed guilty of a misdemeanor and shall be punished upon conviction by assessment of a fine not less than one hundred dollars (\$100.00) and not more than five-hundred dollars (\$500.00). In addition, a person charged with violation of any provision of this ordinance may be ordered to pay restitution to any victim for injury or property damage as a resulting from the violation.

(d) Any person convicted of a second offense of harboring a vicious animal regarding the same animal as the first offense shall relinquish the animal pursuant to the provisions of Section 12 hereunder. The vicious animal shall then be humanely destroyed at the owner's expense. The District Court may offset the fine with the costs of humanely destroying the animal.

SECTION 16: REPEALER

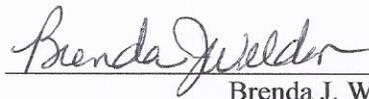
Ordinances numbered 08-11 and 04-24 of the City of Malvern are hereby repealed.

SECTION 17: SEVERABILITY

Should any portion of this Ordinance be declared invalid or unenforceable by any court of competent jurisdiction, said determination shall have no effect on the enforceability of other remaining portions of this Ordinance.

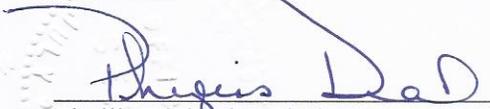
Passed this ___ 8th ___ day of ___ June ____, 2015.

Approved:



Brenda J. Weldon, Mayor

ATTEST:


Phyllis Dial, City Clerk