

**AN ORDINANCE OF THE CITY OF HENDERSONVILLE CITY COUNCIL TO READOPT
AND AMEND CHAPTER 10 OF THE CODE OF ORDINANCES FOR THE CITY OF
HENDERSONVILLE WITH RESPECT TO THE WELFARE OF ANIMALS**

WHEREAS, The Hendersonville City Council established the Animal Services Advisory Committee to provide input on the operations and policies of the Hendersonville Police Department regarding the enforcement of the Animal Ordinance; and

WHEREAS, The last significant amendment to Chapter 10 of the Code of Ordinances included the establishment of the Animal Services Advisory Committee and local enforcement of animal services; and

WHEREAS, The Animal Services Advisory Committee has spent significant time auditing and revising Chapter 10 of the Code of Ordinances to better reflect some of the unique needs of Hendersonville; and

WHEREAS, It is the intent of the City of Hendersonville to align its animal related regulations with applicable state laws in order to ensure the effective enforcement thereof.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HENDERSONVILLE, NORTH CAROLINA THAT:

SECTION 1. Chapter 10 – ANIMALS of the Code of Ordinances of the City of Hendersonville is hereby readopted and amended to read as follows:

ARTICLE I. - GENERAL PROVISIONS

Sec. 10-1. Animal Control Ordinance Purpose

- (a) Pursuant to authority granted by the general assembly, this chapter is enacted to:
- (b) Regulate, restrict or prohibit, if necessary, animals;
- (c) Protect the public from unvaccinated, diseased, stray, roaming, dangerous, wild or exotic animals;
- (d) Make unlawful the acts of animals that interfere with the enjoyment of property or the peace and safety of the community;
- (e) Protect animals from abuse or conditions harmful to their well-being;
- (f) Carry out any other lawful duties authorized by state laws and applicable ordinances;
- (g) Provide peace and dignity of residents; and
- (h) The city council hereby finds that animals kept or allowed to be in violation of any of the sections of this chapter are detrimental to the health, safety, and welfare of the citizens of the city and jeopardize the peace and dignity of the town.

Sec. 10-2 Definitions

For the purposes of this chapter, the following words and phrases shall have the meaning respectively ascribed to them by this section:

Adequate food means the provision of and access to food that is sufficient in quantity, prepared and provided so that the animal can consume it, and provided in a manner that is sanitary for the animal.

Adequate shelter means shelter which meets all the following requirements:

- (a) Is constructed of solid wood or weather resistant material, with solid walls on all sides, that is wind and moisture proof, with a dry floor, a solid, water-proof roof sloped away from the entrance to protect from weather and extreme cold, and a covered entrance by flexible windproof material or a self-closing swinging door;
- (b) Has suitable bedding (hay, straw, cedar shavings, blankets, or the equivalent that is routinely changed to avoid the growth of bacteria) for insulation and protection against cold and damp sufficient for an animal to burrow to promote retention of body heat,
- (c) Is out of the direct path of wind;
- (d) Is free of waste or debris and is otherwise clean and sanitary;
- (e) Gives the animal the ability to walk, stand, turn, and lie down comfortably; and
- (f) Provides drainage to eliminate excess water and moisture, protection from rain, sleet, snow, hail, sun, and the adverse effects of heat and cold.
- (g) The following shall not constitute adequate shelter:
 - (1) Inside of vehicles; or
 - (2) Underneath vehicles; or
 - (3) Inside metal or plastic barrels or cardboard boxes; or
 - (4) Rooms, sheds or other buildings without windows or proper ventilation.

Adequate water means constant access to clean, fresh water provided in a sanitary manner and so that the animal can consume it. During extreme cold weather, the water must be changed frequently to prevent freezing. During extreme hot weather, the water must be changed frequently and served in a non-tipping, non-metal container to prevent heat-related injuries or death.

Animal means every non-human, animate being that is endowed with the power of voluntary motion, including, but not limited to, dogs, cats, livestock and other mammals, birds, reptiles, amphibians, and fish.

Animal Services Center means any holding place or other facility designated by the City of Hendersonville for the detention of animals.

Animal Services Officer means any person properly appointed either by the City of Hendersonville, or any officer authorized to act within the City's jurisdiction due to an inter-local agreement, to enforce all sections of this chapter and applicable state laws and who are responsible for discharging such other duties and functions as may be prescribed by the City Council as set forward by this chapter or any other applicable ordinance or state law or pursuant to inter-local agreements.

Animal at large means any animal off the premises of its owner and not under sufficient physical restraint such as a leash, cage, bridle, or similarly effective device allowing the animal to be controlled. For purposes of this article, voice command is not recognized as sufficient physical restraint. This definition does not apply to any areas in the City that have been delineated by the City Council, such as dog parks.

Animal under restraint means any animal confined within a vehicle, confined within the real property limits of its owner, or secured by leash or lead.

Cat means a domestic feline of either sex.

Dangerous dog means any dog that:

- (a) Without provocation has killed or inflicted serious injury on a person; or
- (b) Is determined by the Chief of Police, their designee, or the Animal Services Advisory Committee to have engaged in one or more of the following behaviors:
 - (1) inflicted a bite on a person that resulted in broken bones or disfiguring lacerations or required cosmetic surgery or hospitalization, or
 - (2) has killed or inflicted severe injury upon a domestic animal when not on the owner's real property, or
 - (3) has approached a person when not on the owner's property in a vicious or terrorizing manner in an apparent attitude of attack; or
- (c) Is owned or harbored primarily or in part for the purpose of dog fighting, or any dog trained for dog fighting.

This definition shall not apply to: (1) a dog that has been subject to provocation, (2) any dog responding to a trespass upon the animal owner's premises, if the victim is the trespasser, or (3) dogs used by law enforcement agencies to carry out official law enforcement duties. Provocation must be clearly established.

Dog means a domestic canine of either sex.

Domesticated means those species of animals that normally and customarily share human habitat and are normally dependent on humans for food and shelter, such as, but not limited to, dogs, cats, cattle, horses, swine, fowl, sheep, goats, reptiles, amphibians, rabbits, and fish.

Harboring an animal means feeding or sheltering an animal for 14 days or more unless the animal is being boarded for a fee.

Holding facility means any pet shop, kennel, cattery, boarding facility, veterinary office, animal shelter, or combination thereof.

Owner means any person owning, keeping, harboring, possessing, or acting as custodian, however temporarily, of an animal; provided, however, that a person having temporary custody or possession of an animal for the sole purpose of turning over such animal to a member of the animal services division or other peace officer shall not be deemed the owner of the animal.

Pet means a domesticated animal kept for pleasure rather than utility. Pets include, but are not limited to, birds, cats, dogs, fish, hamsters, mice, reptiles, domesticated wild animals and other animals associated with man's environment.

Pet shop means a commercial establishment, which offers for sale two (2) or more species of live animals with the intent that they be kept as pets.

Provocation means conduct or actions on the part of any person or animal that is likely to arouse a violent or aggressive response by an animal. This term does not include any action on the part of an individual or animal that pertains to reasonable efforts of self-defense.

Public nuisance animal means any animal or group of animals which:

- (a) Is found at large three or more times in a 12-month rolling period; or

- (b) Damages the property of anyone other than its owner; or
- (c) Is a Vicious Animal; or
- (d) Causes unsanitary condition of enclosures or surroundings; or
- (e) By virtue of number or type is offensive or dangerous to the public health, safety, or welfare; or
- (f) Is diseased and dangerous to the public health.

Serious injury means a physical injury resulting in broken bones, disfiguring lacerations, or requires cosmetic surgery or hospitalization.

Tether means tying out or fastening a dog outdoors on a rope, chain, or other line for restraining a dog. The term does not mean the restraint of a dog on an attended leash.

Vicious animal means any animal which constitutes a physical threat to human beings or other animals by virtue of attacks of such number and severity as to cause property damage or physical injury.

Secs. 10-3—10-30. – Reserved.

ARTICLE II. – ANIMAL SERVICES

Sec. 10-31 General Duties of Animal Services Officer.

The animal services officer shall be charged with the responsibility of:

- (a) Taking up and delivering any animal at large in violation of this chapter to the animal shelter.
- (b) Issuing appropriate permits, civil penalties, and notices required for the enforcement of this chapter.
- (c) Declaring an animal as a potentially dangerous animal, as defined in this chapter, if they determine such. Upon determining that an animal is a potentially dangerous animal, the Chief of Police shall notify the owner of the animal in writing, giving the reasons for the determination. The owner may appeal the determination by filing written objections with the Animal Services Advisory Committee established in this chapter.
- (d) Canvassing the city, including homes and businesses utilizing security animals as necessary to ascertain that all animals are currently vaccinated against rabies; to organize and carry out any such canvas, having sole and exclusive authority, control, and responsibility for such actions; and to ensure that the provisions of this chapter and state law related to animal control are adhered to.
- (e) Investigating complaints regarding animals.
- (f) Protecting animals from neglect or abuse and assist animal cruelty investigators as needed in enforcing state laws regarding cruelty.
- (g) Enforcing the laws regarding remedies for an owner's failure to obtain proper vaccination of animals against rabies.
- (h) Investigating all reported animal bites or other human physical contact with suspected rabid animals and submit bite reports and reports of human contacts to the county health director.

Except as may be otherwise provided by statute or local law or ordinance, no officer, agent, or employee of the city charged with the duty of enforcing the provisions of this chapter or other applicable law shall be personally liable for any damage that may accrue to persons or property because of any act required or permitted in the discharge of such duties.

Sec. 10-32. Animal Enforcement Authority

The animal services officer is hereby authorized to enforce the provisions of this chapter and any other regulation adopted in accordance with the provisions of this chapter.

Sec. 10-33. Inspection, interference, or concealment.

- (a) Inspections: Whenever necessary, inspections will be used to enforce the provisions of this chapter, or whenever the animal services officer has reasonable cause to believe that there exists in any household or upon any premises any violation of this chapter, the animal services officer is hereby empowered to enter and inspect such property at any reasonable time and perform any duty imposed upon them by this chapter as follows:
 - (1) If such property is unoccupied, the animal services officer shall first make a reasonable effort to locate the owner or other person having control of the property;
 - (2) If such property is occupied, the animal services officer shall first present proper credentials to the occupant and request entry, explaining the reasons therefore; and
 - (3) If such entry is refused or cannot be obtained because the owner or other person having control or charge of the property cannot be located after due diligence, the animal services officer may seek an administrative search warrant.
- (b) Interference: It shall be unlawful for any person to interfere with, hinder, assault, molest, resist, or obstruct the animal services officer while the animal services officer is carrying out any duty created under this chapter.
- (c) Concealment of animal: It shall be unlawful for any person to conceal, for the purpose of evading the rabies inoculation requirement of state law, any uninoculated animal from the animal services officer, or to evade any other provision of this chapter.
- (d) In addition to any other remedy available, violation of this section shall constitute a misdemeanor as provided in Section 1-6.

Sec. 10-34. Animal Services Advisory Committee

The Animal Services Advisory Committee shall make recommendations to the City Council regarding animal-related ordinances, policies, and procedures. The Animal Services Advisory Committee may undertake the study of areas under their authority to advise City of Hendersonville staff and City Council.

The Animal Service Advisory Committee, or a duly appointed subcommittee thereof, shall act as the Animal Services Appellate Board and hear all appeals under this chapter when permitted by State law, including appeals of dangerous dog determinations.

The composition, rules of procedure, and all other matters shall be governed by the Animal Services Advisory Committee Charter and Rules of Procedure, as amended.

Secs. 10-34—10-60. – Reserved.

ARTICLE III – KEEPING ANIMALS

Sec. 10-61. – Keeping of certain animals prohibited

It shall be unlawful for any person to keep or maintain any oxen, bison, roosters, or wolf hybrids within the City.

Sec. 10-62. – Swine

It shall be unlawful for any person to keep any hogs or other swine within the city with the exception of miniature pigs weighing not more than 100 pounds kept as household pets. Only one such miniature pig shall be kept in any household. Such pigs shall be kept in a restrained area and shall not be permitted to run at large. Such pigs shall also be kept in accordance with Article V of this Chapter. Any outside area occupied by a miniature pig shall be regularly sanitized and kept free from waste. No such area shall be allowed to become muddy or unsanitary.

Sec. 10-63. – Keeping of other farm animals

Other farm animals may be kept within the City subject to applicable health statutes and regulations, and provided that: (1) none of the foregoing animals may not be kept or maintained within 150 of any building occupied or designated as a residence, except the residence of such animals owner; and (2) the foregoing animals shall be kept in accordance with Article V of this Chapter.

Sec. 10-64. – Keeping of poultry

- (a) It shall be unlawful to maintain a poultry flock of greater than 20 birds.
- (b) In accordance with Sec. 10-61 above, the keeping of roosters is prohibited.
- (c) The keeping of poultry shall be subject to all applicable health statutes and regulations.

Sec. 10-65. – Requirements for construction and maintenance of poultry enclosures.

In addition to the requirements of Article V of this Chapter, each person keeping poultry within the city shall comply with the following rules and regulations:

- (1) The poultry house and run must be fenced, and the birds shall kept within it at all times.
- (2) The poultry house must be used for poultry only and it must be well ventilated, with at least one square foot of window to 15 square feet of floor space.
- (3) The run must be well drained so there will be no accumulation of moisture.

Sec. 10-66. – Disposal of dead chickens and other poultry.

It shall be unlawful for any person to allow any dead chicken or poultry to remain on the premises, and disposal of any dead chicken or fowl may not be contrary to any methods approved by the county health department.

Secs. 10-67—10-90. – Reserved.

ARTICLE IV – OFFENSES AND MISCELLANEOUS

Sec. 10-91. – Animals at large

- (a) It shall be unlawful for the owner of any domesticated animal to allow or permit such animal to be at large within the corporate limits of the city at any time upon any property not his own without the written permission of the owner of such property.
- (b) In addition to any other remedy available, permitting a dog that has been deemed dangerous to run at large is a misdemeanor as provided by Section 1-6.

Sec. 10-92. – Protection of Birds

- (a) The area embraced within the corporate limits of Hendersonville and all land owned or leased by the Hendersonville outside the corporate limits is hereby designated as a bird sanctuary.
- (b) It shall be unlawful intentionally to trap, hunt, kill, or otherwise take, within the sanctuary hereby established, any native wild bird except pursuant to a valid permit issued by the North Carolina

Wildlife Resources Commission; provided, however, that this section shall not be deemed to protect any birds classed as a pest under Article 22A of Chapter 113 of the North Carolina General Statutes and the Structural Pest Control Act of North Carolina of 1955 or the North Carolina Pesticide Law of 1971.

- (c) In addition to any other remedy available, violation of this Section is also a misdemeanor as provided in Sec. 1-6.

Sec. 10-93. – Protections of Squirrels

- (a) The entire area embraced within the corporate limits of the city is hereby designated as a sanctuary for all species of squirrel (family Sciuridae), especially the Brevard White Squirrel.

It shall be unlawful for any person to hunt, kill, trap, or otherwise take any protected squirrels within the city limits except pursuant to a valid permit issued by the North Carolina Wildlife Resources Commission. This section shall not be deemed to protect any squirrels classified as a pest by the North Carolina General Statutes, except that the Brevard White Squirrel shall always be protected by this section.

Sec. 10-94. – Fouling public grounds.

It shall be unlawful for any owner, keeper, or walker of any animal to permit the discharge such animal's excreta upon any public or private property, other than the property of the owner within the city, if such owner, keeper, or walker does not immediately thereafter remove and clean up such animal's excreta from the public or private property.

Sec. 10-95. – Restraint of animals.

- (a) Physical restraint: It shall be unlawful for any Owner of any animal, excluding cats, to keep such animal on their own premises or off the premises, unless such animal is under sufficient physical restraint, such as a leash, cage, bridle or similar effective device which restrains and controls the animal, or within a vehicle or adequately contained by a fence on the premises or other secure enclosure. If the physical restraint used is a leash, bridle, or other device requiring a person to control the animal, the person using such restraint must be of sufficient age and physical size or ability to reasonably restrain the animal. If the secure enclosure is an invisible fence system, then all components of the system must be in working order and in proper place. Additionally, there must be a visible, permanent sign on the premises stating that there is an invisible fence.
- (b) Tethering: Dogs may not be tethered to a stationary object unless a competent adult is in the immediate presence of the dog and the following conditions are met:
 - (1) A tether shall be equipped with a swivel on both ends.
 - (2) A tether shall be a minimum of ten feet in length and shall be made of either metal chain or coated steel cable.
 - (3) Tethers shall be attached to a buckle type collar or harness and under no circumstances shall the tether itself be placed directly around a dog's neck. Tethers shall not be used in conjunction with training collars such as choke or pinch-style collars.
 - (4) The weight of the tether shall not exceed ten percent of the total body weight of the dog but shall be of sufficient strength to prevent breakage.

- (5) The tether by design and placement shall allow the dog a reasonable and unobstructed range of motion without the possibility of entanglement, strangulation, or other injury. The tether shall allow the dog access to adequate food, water, and shelter.
- (6) A dog must be four months of age or older to be tethered.
- (7) Only one dog shall be attached to a single tether.
- (8) Pulley systems, running lines and trolley systems may be used in conjunction with a tether.
- (9) Pulley systems, running lines or trolley systems shall be at least ten feet in length. and no more than seven feet above the ground.
- (10) The line of the pulley system, running line or trolley system to which, the tether is attached shall be made of coated steel cable.
- (11) No tether shall be affixed to a stationary object which would allow a dog to come within five feet of any property line.

Sec. 10-96. – Giveaways in Public Spaces.

It shall be unlawful to display any animal in a public place for the purpose of selling, trading, or giving the animal away or used as a prize or inducement. For this section, public place shall be defined as any place open to the public including but not limited to malls, supermarkets, parking lots, flea markets, farmers markets, road rights-of-way, and parks. This section does not apply to state regulated pet shops, commercial kennels, licensed animal shelters, veterinarian offices, licensed stockyards, or livestock auctions or 501(c)(3) non-profits who adopt out animals with proof of rabies vaccination and alteration

Sec. 10-97. – Excessive noises.

It shall be unlawful for any Owner to allow any Animal to excessively bark, howl, or make other loud noises continuously or intermittently for more than 30 minutes.

The Animal Services Officer shall only be required to investigate an alleged violation of this section upon the receipt of a complaint from two individuals.

Secs. 10-98—10-120. – Reserved.

ARTICLE V. – ANIMAL CRUELTY

Sec. 10-121. – Unlawful treatment.

It shall be unlawful for any Owner to fail to provide an animal with adequate food, water, shelter, necessary medical attention, and humane care and treatment.

Nothing in this section shall be construed to require a standard of care otherwise prohibited by G.S. 160A-203.1.

In addition to all other remedies available, violation of this Section is a misdemeanor as provided in Section 1-6.

Sec. 10-122. – Abandonment.

No owner of an animal shall abandon such animal except to relinquish the animal to the animal shelter during normal business hours. If the Animal Services Officer finds that an animal has been abandoned, the animal may be impounded. If an animal has been abandoned in a house or within a fenced area, the

Animal Services Officer must make a reasonable effort to locate the owner or manager of the property. If the property owner or manager is not the animal owner, then the Animal Services Officer shall secure permission to remove the animal. If the property owner is also the animal owner and this individual cannot be located, the Animal Services Officer shall secure an appropriate warrant to seize the animal. An animal seized pursuant to this section shall be impounded for a period of ten days. If the animal is unclaimed by its owner after being held ten days, the animal shall be disposed of by adoption or humane euthanasia, or transferred to an Animal Services Center or other appropriate facility.

In addition to all other remedies available, violation of this Section is a misdemeanor as provided in Section 1-6.

Sec. 10-123. – Transport of Animals.

Animals transported in open truck beds on public roads shall be secured by cross tethering suitable and acceptable for the size of animal in such a manner that such animal cannot fall or jump over the side or contained in a properly secured and ventilated cage. This provision shall not be applicable to:

- (1) Law enforcement dogs, while being used for investigation, tracking and similar duties under the supervision of a certified law officer;
- (2) Search and rescue dogs, while being used for their intended purpose and under the control of a trained handler;
- (3) Hunting dogs, while being used in a legal hunt on private property, private roads or public secondary roads;
- (4) Farm dogs, while being used for agricultural purposes on private property or private roads; or
- (5) Farm dogs, while being used for agricultural purposes on secondary roads within one mile of property owned, leased, or otherwise used for farm purposes.

In addition to all other remedies available, violation of this Section is a misdemeanor as provided in Section 1-6.

Sec. 10-124. – Confinement of Animals in Motor Vehicles.

It shall be unlawful for any person to place or confine an animal or allow an animal to be placed or confined in a vehicle, building, car, boat, or vessel of any kind under such conditions or for such a period as to endanger the health or well-being of such animal due to temperature, lack of food or drink, or such other conditions as may reasonably be expected to cause suffering, disability, or death.

- (1) When an animal is confined in violation this section, after making a reasonable effort to find the driver of a vehicle in which an animal is confined, the animal services officer, in the presence of a law enforcement officer, may use the least intrusive means to enter the vehicle if necessary to remove the animal, where reasonable cause exists to believe the animal may die if not immediately removed.
- (2) The animal services officer removing the animal shall then impound the animal and leave in a prominent place on the motor vehicle a written notice of the animal's impoundment, a brief description of the animal, and where and when the animal may be reclaimed.

In addition to all other remedies available, violation of this Section is a misdemeanor as provided in Section 1-6.

Sec. 10-125. – Animals used in entertainment, shows, and for exhibition.

It shall be unlawful for any person to sponsor, promote, or train a wild or domestic animal to participate in any unnatural behavior in which the animal is wrestled, fought, harassed, or displayed in such a way that the animal is abused or stressed. This prohibition applies to events and activities taking place in either public or private facilities or property in the town and applies regardless of the purpose of the event or activities and whether a fee is charged to spectators.

In addition to all other remedies available, violation of this Section is a misdemeanor as provided in Section 1-6.

Secs. 10-126—10-150. – Reserved.

ARTICLE VI. – RABIES CONTROL

Sec. 10-151. – Vaccination of dogs and cats required.

It shall be unlawful for an Owner of any dog or cat four months of age or older to fail to provide current vaccination against rabies for such dog or cat.

Sec. 10-152. – Vaccination tag and certification.

- 1) Dogs are required to wear a rabies vaccination tag at all times.
- 2) Cats are not required to wear rabies vaccination tag, but the owner of a cat shall maintain the tag, or the rabies vaccination certificates as written evidence to prove the cat has a current rabies vaccination.
- 3) It shall be unlawful for any person to use for any animal a rabies vaccination tag issued for an animal other than the one using the tag.
- 4) Enforcement: If an animal is found without a rabies tag, the owner shall have 5 calendar days to obtain proper proof of vaccination and present to the Animal Services Officer.
 - a. If after 5 days, there is still no proof of rabies vaccination, the Animal Services Officer may take any of the enforcement actions provided in this Chapter.
 - b. If an animal is found without a rabies tag off the owner's property, the animal shall be impounded for 72 hours for owner reclaim. Prior to release, the animal's vaccination history shall be verified, and rabies vaccine voucher shall be purchased if required.

Sec. 10-153. – Bite Notification

- (a) Reporting requirement: It shall be unlawful for: (1) any person bitten by a dog or cat, (2) their parent or guardian if such person is a minor, and (3) the person owning such animal or having such animal in his possession or under his control to fail to report, within 24 hours of a bite, to the Animal Services Officer that such animal has bitten a person. It shall be unlawful for any person to fail to inform the Animal Services Officer where an animal is located if the owner has given the animal away or caused in any way the animal to be taken from the owner's premises.
- (b) Confinement: All dogs or cats that bite human beings shall be immediately confined for ten days in a place designated by the Henderson County Health Director. If the Owner refuses to confine the animal as required by this section, the Animal Services Officer or the Henderson County Health Director may order the seizure of the animal and its confinement for ten days at the expense of the owner. Following such ten-day confinement, the dog or cat may be released with the written permission of the Animal Services Officer or the Henderson County Health Director.

As provided in N.G.C.S. 130A-196(b), failure to comply with confinement requirements is a Class 2 misdemeanor.

Secs. 10-154—10-180. – Reserved.

ARTICLE VII. – PUBLIC NUISANCE AND DANGEROUS DOGS

Sec. 10-181. – Public Nuisance.

- (a) The keeping of a Public Nuisance Animal, as defined in this Chapter, is hereby prohibited.
- (b) Complaint and notice: Upon receipt of a complaint being made to the Police Department by any resident or residents that any person is keeping a Public Nuisance Animal as defined in this chapter, the Chief of Police shall cause the owner of the animal or animals in question to be notified that a complaint has been received and shall cause the situation complained of to be investigated and a report and findings thereon to be reduced to writing by the investigating Animal Services Officer.
- (c) Abatement. If the written findings of the investigating officer indicate that the complaint is justified, then the Chief of Police shall cause the Owner of the animal or animals in question to be so notified in writing, by registered mail, return receipt requested, or by personal delivery, ordered to abate such nuisance within five days after notification, and issued a citation for the violation. In the event the Owner of the animal or animals is unknown and cannot be ascertained, the notice and order, along with a general description of the animal or animals shall be published within a local newspaper. In addition, any animal determined to be a nuisance under this section must be micro chipped at the owner's expense within ten days of the Public Nuisance Animal determination or appeal determination. Failure to comply within this time frame shall constitute a separate offense for each day thereafter.
- (d) Impoundment upon failure to abate. If any person receiving notice in the manner hereinabove described shall fail or refuse to abate the nuisance upon order of the Chief of Police within the specified time, the Chief of Police may cause the animal or animals in question to be apprehended and impounded.
- (e) Civil penalties. Additionally, if any person receiving notice in the manner hereinabove described shall fail or refuse to abate the nuisance upon order of the Chief of Police within the specified time, the Chief of Police may assess a civil penalty as provided in Section 1-6.
- (e) Right of appeal. Within seven days from receipt of their notification, the owner of the nuisance animal may appeal the findings of the Chief of Police by giving written notice of appeal to the Chief of Police. An appeal shall stay the abatement of the Public Nuisance Animal determination until a final determination by the Animal Services Advisory Committee.
- (f) Inspection. The Animal Services Officer is hereby permitted to make periodic inspections of animals deemed to be Public Nuisance Animals to ensure compliance with this Chapter.

Sec. 10-182. – Declaration of dangerous dogs.

The Chief of Police shall have the authority to declare a dog to be a dangerous dog. Any determination that a dog is a dangerous dog shall be made in writing, summarizing the available evidence. The letter shall be served by personal delivery or by certified or registered mail to the Owner. The written determination shall order compliance with the appropriate provisions of this chapter and may impose reasonable conditions to maintain the public health and safety.

Sec. 10-183. – Dangerous dogs restricted.

It shall be unlawful for any person to own or in any way maintain or harbor a dog that has been deemed dangerous, except as provided in this chapter. Notwithstanding any enumerated exception in listed in Sec. 10-2, any dog which has killed a person shall be immediately euthanized.

Sec. 10-183. – Appeal.

Any person who owns a dog that has been declared a dangerous dog shall have the right to appeal the declaration to the Animal Services Advisory Committee as provided herein:

- (a) Manner of appeal. The Owner of a dangerous dog may request an appeal of the determination in writing. The written appeal must be submitted to the Chief of Police, must state the Owner's address, and must be received or postmarked within seven calendar days of the receipt by the Owner of notice of the declaration.
- (b) Pending the appeal, the Owner of a dangerous dog shall comply with the provisions of Section 10-184 herein.
- (c) Hearing procedures. Once properly appealed, the Animal Services Advisory Committee shall conduct a quasi-judicial hearing to determine whether the declaration of the dog as a dangerous dog should be upheld.
- (d) Outcome. If the dog is affirmed by the animal services advisory board as being a dangerous dog, then the Owner shall comply with the provisions of this Chapter. Any person who owns a dog upheld as a dangerous dog by the Animal Services Advisory Committee has the right to appeal this determination to the Henderson County Superior Court.

Sec. 10 –184. – Enclosures and control measures.

- (a) If a dog has been determined to be a dangerous dog, as specified in this section, the dog may be retained upon the Owner satisfying the following conditions:
 - (1) The Owner must always ensure that the dog on and off the Owner's property remains securely enclosed as per the ordinance or controlled and muzzled as described below.
 - a. Confine the dog within the owner's residence; or
 - b. Erect and confine the dog (except when muzzled and controlled as required below), within 30 days in a securely enclosed and padlocked pen with a concrete bottom and secure top. The structure must be at least 10x10 feet and be secured by a tamper-proof lock. Pending construction of such pen, the dog must be confined within the owner's residence; or
 - c. The animal must be muzzled and under restraint by a competent person who, by means of a leash, always has such animal firmly under physical restraint when not in a secure building or enclosure. The muzzle must be a basket muzzle.
 - d. Any dog deemed dangerous shall not be permitted in public recreation areas, including dog parks, parks, or greenways.
 - (2) The owner must post one or more warning signs provided by the city, which are to be visible to any adjoining property from each exposure of the residence or the structure in which the dangerous dog is confined. The city may charge a fee for each sign provided.
 - (3) The owner of a dangerous dog must maintain in full force and effect a liability insurance policy of at least \$100,000 for personal injury or death of any person resulting from an

attack by such dangerous dog. The owner shall provide the Animal Services Officer with a certificate of insurance which shall require 30 days written notice by the insurer or owner in the event of cancellation, reduction or other modifications of coverage. In addition to the notice requirement above, owner shall provide the Animal Control Officer with immediate written notice of cancellation, reduction, or other modification of coverage of insurance.

- (4) Within ten days of the determination or appeal determination, the owner of a dangerous dog must demonstrate to the Animal Services Officer that such dog had a microchip implanted.
- (5) The Animal Services Officer may periodically inspect the premises where a dangerous dog is kept verifying compliance with the provisions of this chapter. The Owner must permit these inspections at any reasonable time without notice to the Owner from the Animal Enforcement Officer.
- (6) All dogs deemed dangerous must be altered within 30 days of the determination.
- (7) Control measures.
 - a. All control measures required by this section must be met immediately upon the determination that the dog is dangerous except for the construction of the enclosure discussed in the subsection of this provision. The owner has 30 days to construct the enclosure during which time the animal must be confined indoors and may only be permitted outside under the control of a competent person by leash and the animal must be muzzled.
 - b. If the owner has no place to keep the animal while the structure is being constructed, the animal may be kept at the Henderson County Animal Services Center or at a private establishment approved by the Animal Services Officer and Henderson County Animal Services at the owner's expense.

(b) Notification within 24 Hours:

- (1) Change of address or ownership of a dangerous dog, the owner shall provide written notification of the change of address or ownership to the Chief of Police, stating the full name if there's a new owner, address, and location of the new owner of the dog.
 - (2) Of the death of a dangerous dog, the owner shall provide written notification of the dog's death to the Chief of Police.
- (c) Notification Prior to Transfer. Prior to any transfer to a new Owner (with or without consideration) of a dangerous dog, the owner must provide to the Chief of Police a written statement, signed before a notary by the transferee, indicating the transferee's understanding of the transferee's obligations hereunder as an owner of a dangerous dog. If the dangerous or dog is being transferred out of the City of Hendersonville, or out of North Carolina, the owner of the animal must notify the Chief of Police of the new jurisdiction to which the animal is being moved that this dog has been deemed a dangerous dog. The Chief of Police also shall notify the new jurisdiction that the animal has been deemed dangerous and the circumstances surrounding the case. The Owner must comply with any local regulations regarding dangerous dogs in the new location. No dog deemed dangerous may be adopted pending the outcome of quasi-judicial hearing.

- (d) In addition to all other remedies available, violation of this Section is a misdemeanor as provided in Section 1-6.

Sec. 10-185. – Impoundment Authorized.

- (a) Immediate impoundment: Any dangerous dog may be immediately impounded if the animal is kept in violation of this section. Civil penalties may be imposed.
- (b) Cost of impoundment: Costs of impoundment shall be paid by the owner for the animal at a daily rate as determined by the impoundment facility. In instances where the animal must be impounded at a private facility or kennel, the person liable for the animal will pay the rate established by those facilities.
- (c) Release from impoundment:
- (1) Dog deemed dangerous/potentially dangerous may only be released to owner if the following requirements have been satisfied
 - a. Proof of compliance submitted to Chief of Police, or
 - b. Approval of proof by the Chief of Police is submitted in writing to the impoundment facility.
 - (2) If criminal charges have been brought against the Owner for failure to comply with this Chapter, for interference with the operations of the Animal Services Officer, or criminal charges under N.C.G.S. Chapter 67 Article 1A, no dog deemed dangerous/potentially dangerous shall be released from the impoundment until determined by a court of competent jurisdiction. During this time while the dog is impounded, costs of impoundment shall continue to be charged to the Owner.

Sec. 10-186 – Destruction of animals that cannot be seized or confined by reasonable means.

- (a) Notwithstanding any other provision of this Chapter, an animal that cannot be seized by reasonable and normal means, trapped in a humane, live-capture animal trap, or tranquilized, alternative resources being exhausted, may be humanely destroyed in the field by animal services or other law enforcement officers.
- (b) Vicious, dangerous animals so designated, or wild animals, or an animal attacking a human being, domestic animal, livestock, or fowl another pet, or livestock may be immediately destroyed in the field, if such destruction is necessary for the protection of the public health and safety or that of city staff.

Secs. 10-187—10-210. – Reserved.

ARTICLE VIII. – ENFORCEMENT

Sec. 10-211. – Violations and penalties.

The following penalties shall pertain to violations of this chapter:

- (a) This chapter may be enforced by criminal penalty where specifically provided.
- (b) Enforcement may include any appropriate equitable remedy, injunction or order of abatement issued by a court of competent jurisdiction pursuant to N.C.G.S. §160A-175(d) and (e).

(c) Civil penalties. In addition to and independent of any criminal penalties and other sanctions provided in this article, violations of this article may also subject the offender to the civil penalties hereinafter set forth.

(d) A combination of the forgoing and/or any other remedy available by law.

Sec. 10-212. – Civil Penalties

(a) Generally: Any person who violates any provision of this chapter shall be subject to a civil penalty for each level of violation in accordance with subsection (d) of this section and the corresponding civil penalty in the Civil Penalty Schedule, Section 10-213. If the violation is continued, each day's violation shall constitute a separate offense. For the purposes of this chapter, repeat violations occur where the City has issued a civil penalty for the same offense within a 12-month period. Nothing in this section shall prevent the City from issuing warning violations.

(b) Issuance of a citation: Issuance of a citation for violation of this chapter is directed toward and against the known owner. The purpose of the issuance of a citation is to affect the conduct of the owner by seeking to have the owner ensure compliance with this chapter. The issuance of a citation hereunder shall not affect the prosecution of a violation hereof as a misdemeanor as provided above. A citation shall:

(1) Give notice of the violation(s) alleged of the owner;

(2) State the civil penalties for such violation(s);

(3) State the date by which any penalties for such violation(s) must be paid; and

(4) State that the city may initiate after such date a civil action to collect the civil penalties which are and may become due.

(c) If the owner of an animal or other alleged violator does not respond to the above-described citation, or the applicable civil penalty is not paid within the time period prescribed, a civil action may be commenced to recover the penalty and costs associated with collection of the penalty. The city manager or his designee are expressly authorized to initiate and prosecute small claims actions in district court to collect civil penalties and fees due to the city under this Chapter.

(d) Penalty severity: The severity of violations of the provisions of this chapter shall be as follows:

(1) Violation of the following shall constitute a level I violation:

a. Section 10-61. – Keeping of certain animals prohibited.

b. Section 10-62. – Swine.

c. Section 10-63. – Keeping of other farm animals.

d. Sec. 10-64. – Keeping of poultry.

e. Sec. 10-65. – Requirements for construction and maintenance of poultry enclosures.

f. Sec. 10-91. – Running at large.

g. Sec. 10-94. – Fouling public grounds.

h. Sec. 10-95. – Restraint of animals.

- i. Sec. 10-97. – Excessive noises.
 - j. Sec. 10-123. – Transport of animals.
 - k. Sec. 10-151. – Vaccination of dogs and cats required.
 - l. Sec. 10-152. – Vaccination tag and certification.
 - m. Violation of any provision of this Chapter not otherwise provided for in this subsection (d).
- (2) Violation of the following shall constitute a level II violation:
- a. Section 10-66. – Disposal of dead chickens and other poultry.
 - b. Sec. 10-92. – Protection of birds.
 - c. Sec. 10-93. – Protection of squirrels.
 - d. Sec. 10-96. – Giveaways in public spaces.
 - e. Sec. 10-122. – Abandonment.
 - f. Sec. 10-153. – Bite notification.
 - g. Sec. 10-181. – Public nuisance.
- (3) Violation of the following shall constitute a level III violation:
- a. Sec. 10-33. – Inspection, interference, or concealment.
 - b. Sec. 10-121. – Unlawful treatment.
 - c. Sec. 10-124. – Confinement of animals in motor vehicles.
 - d. Sec. 10-125. – Animals used in entertainment, shows, and for exhibition.
 - e. Sec. 10-184. – Enclosures and control measures.

Sec 10-213. – Civil penalty schedule

Civil Penalty Schedule				
	First Violation	Second Violation	Third Violation	Additional Violations
Level I	Warning	\$50	\$100	\$200
Level II	\$100	\$150	\$200	\$400
Level III	\$200	\$300	\$500	\$500

SECTION 2. If any provision of this ordinance or its application is held invalid, the invalidity does not affect other provisions or applications of this ordinance that can be given effect without the invalid provisions or application, and to this end the provisions of this ordinance are severable.

SECTION 3. It is the intention of the city council and it is hereby ordained, that the provisions of this ordinance shall become and be made part of the Code of Ordinances, City of Hendersonville, North Carolina, and the sections of this ordinance may be renumbered to accomplish such intention.

SECTION 4. This Ordinance shall be effective upon its adoption.

Adopted by the City Council of the City of Hendersonville, North Carolina on this ____ day of _____, 2023.

Attest:

Barbara G. Volk, Mayor, City of Hendersonville

Jill Murray, City Clerk

Approved as to form:

Angela S. Beeker, City Attorney