

ORDINANCE NO. 1287

ORDINANCE RELATING TO DOGS; PROVIDING FOR TICKETING AND FINES FOR DOGS RUNNING AT LARGE; PROHIBITING DOGS FROM COMMITTING NUISANCE OR DISTURBING THE PEACE; SETTING OUT REGULATIONS FOR DANGEROUS OR BITING DOGS; ESTABLISHING ANIMAL CONTROL OFFICERS AND PROVIDING PENALTIES FOR VIOLATION OF THIS ORDINANCE; REPEALING OF ORDINANCE 789 and 891.

Section 1. PREAMBLE

- a) The purpose of this ordinance is to:
 - 1) Provide a procedure to address dogs running at large within the City;
 - 2) To provide a procedure for the general public to complain about and ultimately prosecute keepers of dogs which disturb the peace and quiet, destroy property, are dangerous, vicious, or are otherwise a nuisance;
- b) The ordinance shall be enforced by the City of Hillsboro's Law Enforcement Officers. Police Officers shall have the authority and power to issue citations to any owner, keeper or harbinger of any dog within the City limits.
- c) This ordinance is intended to create municipal infractions for violation of provisions following. Each provision provides a specific penalty by fine and other lawful sanction as deemed appropriate by the Municipal Court. Nothing in these penalty sections should limit the Municipal Court from ordering appropriate legal costs such as court costs, restitution and fees. Further, nothing in this ordinance shall limit the Municipal Court from ordering that any dog found in violation of this ordinance should be placed in impoundment pending future order of the court.

Section 2. DEFINITIONS

- a) For the purposes of the succeeding sections, the following means shall apply:
 - 1) Owner-any person owning, keeping, supplying food, shelter, or otherwise indicating ownership of a dog.
 - 2) Dog-shall mean any dog over 6 months of age.
 - 3) General Public-all persons, adult or minor, not engaged in unlawful behavior.

Section 3. REGISTRATION AND VACCINATION OF DOGS

- a) Every owner of a dog within the limits of the City of Hillsboro, shall annually register the animal with the City Clerk. The dog shall be registered within 10 days of its presence in the city, or no later than March 31, for dogs previously registered. The City Clerk or their designee shall be furnished the name, description, and current address of the dog's location. The City Clerk or their designee shall receive from the owner, a certificate of immunization for rabies from a licensed veterinarian showing that immunization will be effective for the year in which the dog is licensed.

Section 4. REGISTRATION FEES AND ISSUANCE OF TAGS

- a) Upon receipt of required information and proof of vaccination the City Clerk or their designee shall receive from the registrant an annual fee for expenses and supervisory costs. There will be no proration of fees over the calendar year. Fees are established as follows:

- 1) A fee of not less than \$10.00 which may be changed from time to time by resolution of the Governing Body.
 - 2) The City Clerk may charge an additional **\$1.00** for each calendar month or part thereof during which the registration fee is delinquent.
- b) The City Clerk or their designee shall record the information received from the applicant including immunization, which shall be a matter of public record. Upon completion of registration, a metallic tag for each year, with an identification number, shall be given the registrant to be placed on the dog's collar.

Section 5. OWNER SHALL REQUIRE DOG TO WEAR TAG

- a) The owner shall place around the neck of the registered dog by a collar or halter, a metallic tag issued by the City Clerk or their designee and it shall be the responsibility of the owner to insure that the tag be constantly worn by the dog. In the event such tag becomes lost, the owner shall be required to obtain a duplicate from the City Clerk or their designee upon payment of the sum of \$0.25.

Section 6. REGISTRATION REQUIREMENT OF DOGS IN CITY LIMITS

- a) It shall be unlawful for an owner to fail to register a dog kept within the City limits of Hillsboro, Kansas in violation of Sections 3 through 5.

Section 7. OWNER SHALL TAG DOG

- a) It shall be unlawful for the owner to fail to attach and maintain city dog registration tags upon his dog.

Section 8. DOG SHALL BE CONFINED

- a) It shall be unlawful for the owner of a dog to permit said animal to leave the owner's premises within the city, except that the dog be controlled by a leash or other physical confinement.

Section 9. UNLAWFUL FOR DOG TO DISTURB PEACE

- a) It shall be unlawful for the owner of a dog to permit such animal, after a notice by the city police of a prior disturbance, to disturb the peace and quiet of others within the city limits.

Section 10. DOGS SHALL BE CONFINED IN BUSINESS PLACES

- a) It shall be unlawful for any owner of a dog to permit it to remain unconfined in the owner's place of business at times of access by the general public.

Section 11. UNLAWFUL FAIL TO VACCINATE DOG OR CAT

- a) It shall be unlawful for any owner of any dog of the age of 6 months or older, or any cat of the age of 4 months or older to fail to vaccinate the animal for rabies by a licensed veterinarian and to keep the animal immunized.

Section 12. DOGS RUNNING AT LARGE

- a) It shall be unlawful for the owner, keeper or harbinger of any dog to allow such dog to run at large within the City at any time.
- b) The owner or keeper of any dog cited for allowing a dog to run at large shall be guilty of a Class C violation, punishable by a fine as described below and/or imprisonment for a term of up to 30 days.

- 1st Offense: \$50
- 2nd Offense: \$100
- 3rd Offense: \$150
- 4th Offense: \$250
- 5th Offense: \$500

If said dog destroys the property of another while running at large, the Municipal Judge may consider restitution as a dispositional option.

- c) The number of prior offenses as referenced above refers to the owner of the dog found running at large and not the dog. Offenses shall be tracked as of January 1, 2018 for purposes of determining prior offenses and shall not be considered if such prior offense was older than five (5) years on the date of the current violation was found to have occurred.
- d) The Judge of the Municipal Court may also, among other conditions or requirements, order the dog to be removed from the City limits or for the owner, keeper or harbinger to be prohibited from owning, keeping or harboring a dog within the City limits if the Judge determines the owner, keeper or harbinger is continuously, negligently or intentionally allowing his/her animal to run at large.

Section 13.DOGS COMMITTING DISTURBANCE OR NUISANCE

- a) It shall be unlawful for the owner or keeper of any dog to allow such dog to disturb the peace and quiet by barking, howling or otherwise be a nuisance to others. Upon complaint by anyone so affected by dogs, the Police Officer shall attempt to notify the owner or keeper thereof, and if after such notice or attempted notice such dog or dogs continue to disturb the peace or otherwise be nuisance to other persons, then the owner or keeper shall be subject to a fine of not less than \$10.00 and not more than \$100.00, and other lawful sanction.

Section 14.HANDLING OF DOGS BITING PERSONS

- a) If any dog shall bite or tear the clothes of any person with its teeth, whether upon the premises of the owner or keeper or on any other premises, it shall be the right of the person so damaged, or any other person having information of same to make and file a complaint on oath with the Police Officer alleging briefly the facts concerning the attack and description of the dog and the name of the keeper thereof.
- b) It shall be unlawful for the keeper of any dog, or any person harboring any dog when notified that such dog has bitten any person or has so injured any persons to cause an abrasion of the skin, to sell or give away such dog for a period of thirty (30) days. It shall be the duty of such keeper upon receiving notice of the character aforesaid to immediately place such dog in a licensed veterinarian hospital at keeper's expense where such dog shall be confined for a period of not less than ten (10) days; and such keeper or person harboring such dog shall notify the City Clerk of the place of said dog and the date it was confined. Failure to follow this section is unlawful and keepers found in violation shall be subject to a fine of not less than \$50.00 nor more than \$200.00 and other lawful sanction.

Section 15.POTENTIALLY DANGEROUS DOGS; VICIOUS DOGS

- a) As used in this section, "dangerous dog" shall mean and include any of the following:
 - 1) Any dog which has a propensity, tendency or disposition to attack unprovoked, to cause injury or to otherwise endanger the safety of human beings or domestic animals; or
 - 2) Any dog which has attacked a human being or domestic animal without provocation; or
 - 3) Any dog kept or harbored primarily, or in part, for the purpose of dog fighting, or any dog trained for dog fighting; or

- 4) Any dog, not owned by a governmental or law enforcement unit, used primarily to guard public or private property; or
 - 5) Any dog that has been determined to be a dangerous dog in an administrative hearing pursuant to subsection 15; or
 - 6) Any dog that has become a dangerous dog upon first conviction and upon second conviction.
- b) "Vicious dog" means any of the following:
- 1) Any dog which, when unprovoked, in an aggressive manner, inflicts serious injury on a human being or kills a domestic animal; or
 - 2) Any dog previously determined to be and currently listed as a potentially dangerous dog which, after its owner or keeper has been notified of this determination, continues the behavior described in Section 5(a) or is maintained in violation of Section 6.
- c) It shall be unlawful for any person to own, keep or harbor a dog that such person knows, or reasonably should know, to be a dangerous dog, unless the owner, keeper or harbinger complies with all of the following requirements:
- 1) *Confinement.* The dangerous dog shall be confined, as set forth hereinafter. "Confined," as that term is used in this section, shall mean such dog is securely kept indoors or in a securely enclosed and locked pen or dog-run area made of at least nine-gauge chain link with no more than one-inch spacing. Said pen or run must be locked with a key or combination lock whenever such dog is within the structure. Said pen or dog-run area must have sides at least six feet high and be secured over the top. If the pen or dog-run area has no bottom secured to the sides, the sides must be embedded into the ground no less than one foot deep. No dangerous dog may be kept on a porch, patio, or in any part of a structure that would allow the dog to exit the structure on its own volition. No dangerous dog may be kept in a structure when the windows are open or when screened windows or doors are the only obstacle preventing the dog from exiting the structure.
 - 2) *Leash and muzzle.* When the dangerous dog is not confined pursuant to subsection 5(b)(1), the dog shall be securely muzzled and restrained with a leash, chain, rope, or harness having a minimum tensile strength of 300 pounds and not exceeding four feet in length.
 - 3) *Notice.* The owner, keeper, or harbinger shall display, in a prominent place on the premises where the dog is kept, a sign easily readable by the public using the words "Beware of Dog." In addition, a similar sign shall be posted on the pen or run of such animal.
 - 4) *Registration and reporting.* The owner, keeper or harbinger of a dangerous dog shall properly license the dog pursuant to sections 3 and 5 of this Code, and pursuant to the provisions set forth in this subsection. In addition to having, or obtaining, the license required by section 3, an owner, keeper or harbinger of a dangerous dog shall submit a completed application for a dangerous dog license to the city clerk or his/her designee, on or before January 1, 2019, or within five business days of the date upon which the dog would be deemed to be dangerous under the provisions of this section, if such occurs after January 1, 2019. The application for a dangerous dog license shall be submitted on forms provided by the city clerk, and to be considered a completed application it shall be accompanied by all documents and other information required hereunder. Upon issuance, the dangerous dog license shall be effective for one year from the date of issuance, or for the duration of the liability insurance required by this section, whichever is shorter, and shall be reapplied for prior to its expiration. Such dangerous dog license shall not be

transferable and shall expire whenever changes occur that would make the keeper or harborer ineligible to obtain a license. The owner, keeper or harborer of the dangerous dog shall pay a \$50.00 annual registration fee for each dangerous dog, and such fee shall be submitted with the application for a dangerous dog license. No dog shall be considered to be unlicensed under the terms of this subsection, if the owner, keeper or harborer has timely filed a completed application, until such application has been denied. The owner, keeper or harborer of the dangerous dog shall maintain with the city clerk or his/her designee the address where the dangerous dog is primarily kept or harbored. The owner, keeper or harborer shall notify the city clerk or his/her designee within five business days if any of the following occurs:

- i. A change in the primary address where the dangerous dog is kept or harbored, whether in or out of the city limits; or
 - ii. A change in the person who is owning, keeping or harboring the dangerous dog; or
 - iii. The death of the dangerous dog; or
 - iv. Any change in the information supplied in the application for the dangerous dog license, or in the information submitted along with such application.
- 5) *Insurance.* Any owner, keeper or harborer of a dangerous dog shall maintain liability insurance in the single-incident amount of \$100,000.00 for bodily injury or death of any person(s), or for damage to property which may result from actions of the dangerous dog, or from actions or inactions of the owner, keeper or harborer related to the dangerous dog. The application, or reapplication, for a dangerous dog license, pursuant to subsection 5(b)(4), shall include a certificate of liability insurance that indicates the required insurance level and is valid for the intended registration period.
- 6) *Neutering.* The dangerous dog shall be spayed or neutered by a veterinarian licensed by the state of Kansas. The application, or reapplication, for a dangerous dog license, pursuant to subsection 15(c)(4), shall include documentation showing that the dog has been spayed or neutered.
- 7) *Identification.* The dangerous dog shall have an identification microchip inserted into the dog, which shall not be removed during the dog's life. The application, or reapplication, for a dangerous dog license, pursuant to subsection 15(c)(4), shall include documentation showing that such microchip has been properly inserted. Any owner, keeper or harborer of the dangerous dog must, prior to the issuance of the dangerous dog license, make the dog available to the city to take photographs to be used to depict the animal's size, coloring, and distinguishing features. Failure to make the dog available, when reasonably requested by the city, shall be grounds for denial of the application.
- d) Any owner, keeper or harborer of a dog that is a size and breed that allows the dog to be capable of inflicting life-threatening injuries upon human beings or domestic animals is hereby held to a very high standard of care regarding their knowledge of factors or incidents that indicate that the dog may be dangerous as defined in subsection 15(a). The court, in determining whether an owner, keeper or harborer of such dog reasonably should know about the dog's dangerousness, shall apply such very high standard.
- e) In the event that an animal control officer or law enforcement officer has probable cause to believe that a dog is dangerous as defined by subsection 15(a), such officer may file an affidavit with the municipal court judge, setting forth the facts upon which such officer relies to support such probable cause. Upon receipt of such affidavit, if the judge determines that the facts set forth in the affidavit

are sufficient to establish such probable cause, the judge shall schedule a hearing for the purpose of determining whether or not the dog in question should be deemed dangerous as defined by subsection 15(a). The judge shall also, upon request of the city prosecutor, issue a search warrant, pursuant to Kansas law to seize the dog, and to impound the dog at the municipal animal shelter pending the determination of whether the dog is dangerous. The court shall provide notice of the hearing to any known owner, harbinger or keeper of the dog. Such notice shall be served on such owner, harbinger or keeper in the same manner as the service of a subpoena. The hearing date shall not be less than five days nor more than 20 days following the date of service upon the harbinger or keeper. At the hearing, the city shall have the burden, by clear and convincing evidence, to prove that the dog is dangerous pursuant to subsection 15(a) and shall present evidence to that effect. The owner, keeper or harbinger of the dog may present evidence to rebut the city's evidence. The failure of the owner, keeper, or harbinger to attend or participate in the hearing shall not prevent the judge from making the appropriate determination concerning the dog. After the hearing, the owner, keeper or harbinger of the dog shall be notified in writing of the judge's determination. If a determination is made that the dog is dangerous, the owner, keeper or harbinger shall comply with the requirements of subsection 15(b) and shall pay the costs of impoundment incurred by the City within the time frame established by the court, which shall not be more than 20 days. If the dog has been impounded pending the determination by the court, the dog shall remain impounded until the harbinger or keeper has complied with this subsection. If the keeper or harbinger fails to comply with the provisions of this article within the time frame established by the court, and the court has not granted an extension of such time, the owner, keeper or harbinger shall be deemed to have abandoned the dog and it shall become the property of the city. The city shall have the right to dispose of the dog in any manner it determines to be applicable, including the destruction of the dog. Either the city or the owner, keeper or harbinger may appeal the judge's determination to the Marion County District Court, by filing an appeal, and posting the appropriate bond, pursuant to Article 46 of Chapter 12 of the Kansas Statutes. In the event of an appeal by the owner, keeper or harbinger of a dog impounded hereunder, the bond for such an appeal shall include an amount to insure the payment of the costs of impoundment for 30 days and such bond may be adjusted during the pendency of such appeal. The failure to post such bond, or any adjustment thereto, within a time frame established by the court shall be deemed an abandonment of the dog by the owner, keeper or harbinger and the city shall have the right to dispose of the dog in any manner it determines to be applicable, including the destruction of the dog. If the dog is not determined to be dangerous, the court may determine whether the owner, keeper or harbinger shall pay any, or all, of the costs of impoundment, taking into consideration whether other reason(s) existed for impoundment and such other relevant factors as the court determines.

- f) In addition to any penalties the court may prescribe for violation of this section, if the court finds, after notice to the keeper or harbinger is unlikely to comply with the provisions of this section, or because the court finds that, even with compliance with this section, the dangerous dog poses a threat to the public that is unreasonable, the court shall order such animal destroyed.
- g) No person who has been convicted of a violation of this section shall keep or harbor a dangerous dog, nor shall such person be eligible for a dangerous dog license for a period of five years following such conviction. In addition, no dangerous dog shall be kept or harbored, and no license shall be issued for any dog, if the primary location where such dog is to be kept or harbored is the residence of a person who has been convicted of a violation of this section within the previous five years. Except that, if the court permits the person who has been convicted of a violation to keep or harbor his or her dangerous dog(s) existing at the time of the conviction, the person may keep and harbor such dogs and apply for or reapply for a dangerous dog license only for those particular dog(s).

- h) This section does not apply to animal control facilities, veterinarians or to dogs while utilized by any police department or any law enforcement officer in the performance of police work.
- i) JUDICIAL PROCESS: If a Police Officer has investigated and determined that there exists probable cause to believe that a dog is potentially dangerous or vicious, the officer shall petition the Municipal Court for a hearing for the purpose of determining whether or not the dog in question should be declared potentially dangerous or vicious. Whenever possible, any complaint received from a member of the public which serves as the evidentiary basis supporting the finding of probable cause shall be sworn to and verified by the complainant and shall be attached to the petition. The officer shall notify the owner or keeper of the dog that a hearing will be held by the Municipal Court, at which time he or she may present evidence as to why the dog should not be declared potentially dangerous or vicious. 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. If, after hearing, a determination is made that the dog is potentially dangerous or vicious, the owner or keeper shall comply with Section 15 in accordance with a time schedule established in an order prepared by the Municipal Judge. This order may be appealed pursuant to Kansas law.
- j) If upon investigation, it is determined by the Police Officer that probable cause exists to believe the dog in question poses an immediate threat to public safety, then the officer may seize and impound the dog pending the hearings to be held pursuant to this article. 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 adjudicated potentially dangerous or vicious.
- k) No dog may be declared potentially dangerous or vicious if any injury or damage is sustained by a person who, at the time the injury or damage was sustained, was committing a willful trespass or other tort upon the 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.
- l) No dog may be declared potentially dangerous or vicious 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 or vicious if an injury or damage was sustained by a domestic animal, which at the time the injury or damage was sustained was at large or if the animal was the aggressor in causing the altercation.

Section 16. DISPOSITION OF POTENTIALLY DANGEROUS OR VICIOUS DOGS

- a) All potentially dangerous dogs shall be properly licensed and vaccinated. The City Clerk shall include the potentially dangerous designation in the registration records of the dog, either after the owner or keeper of the dog has agreed to the designation or the Municipal Judge has determined the designation applies to the dog.
- b) A potentially dangerous dog shall at all times be subject to the standards contained in Section 15(c).
- c) If there are no additional instances of the behavior described within a 36-month period from the date of designation as a potentially dangerous dog, the dog shall be removed from the list of potentially dangerous dogs. The dog may, but is not required to be, removed from the list of potentially dangerous dogs prior to the expiration of the 36-month period if the owner or keeper of the dog demonstrates to the Police department 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.

- d) A dog determined to be a vicious dog, may be destroyed by the Police Officer when it is found, after proceedings conducted under Section 15, that the release of the dog would create a significant threat to the public health, safety, and welfare.
- e) If it is determined that a dog found to be vicious shall not be destroyed, the Municipal Judge shall impose conditions upon the ownership of the dog that protect the public health, safety, and welfare.
- f) The owner of a dog determined to be a vicious dog may be prohibited by the City or County from owning, possessing, controlling, or having custody of any dog for a period of up to three years, when it is found, after proceedings conducted under Section 15 that ownership or possession of a dog by that person would create a significant threat to the public health, safety, and welfare.

Section 17.KENNEL LICENSE

- a) The maximum number of dogs, 6 months of age and older, that may be kept in a household within the city limits is limited to 3. If more than 3 dogs are kept in one household, the owner must acquire a kennel license and must comply with requirements as set forth by the Kansas State Board of Health. Kennel licenses may be issued only in areas that are zoned other than any residential zoning or central business district. The fee for issuance of a kennel license within the city limits of the City of Hillsboro shall be \$50.00.

Section 18.PUNISHMENT UPON CONVICTION

- a) Violation of any of sections above not otherwise defined shall be treated as a Class C Misdemeanor pursuant to section 12-1301 and 12-1302 of the Code of the City of Hillsboro, Kansas and penalty assessed to the owner accordingly.

Section 19.Hillsboro City Ordinance No. 789 and Hillsboro City Ordinance No. 891 are hereby repealed and amended by this ordinance.

This ordinance shall be effective from date of its passage and upon one publication in the official city newspaper.

PASS AND APPROVED by Hillsboro City Council this 15 day of May, 2018.

Signed: Lou Thurston, Mayor Attested by: Jan Meisinger, City Clerk