

35.290

DANGEROUS ANIMALS CITY OF MOUNT CLEMENS

ord. eff. _____, 2022

35.291 - Sec. 1. Definitions. The following words, terms and phrases when used in this ordinance shall have the meaning ascribed to them in this section, except where the content clearly indicates a different meaning.

1. *“Dangerous Animal”* shall mean any of the following:
 - (a) Any mammal, amphibian, fish, reptile, or fowl of a species which due to size, vicious nature or other characteristics would constitute a danger to human life or physical well-being or to animals.
 - (b) Any animal having a known disposition or propensity to attack, bite, or injure any person or animal without provocation. Where the official records of the Animal Control Officer, City Clerk, Sheriff’s Office, or Clerk of the 41-B District Court indicate that an animal has bitten or attacked any person or animal, it shall be prima facie evidence that said animal is a dangerous animal.
 - (c) Any animal owned or kept primarily or in part for the purpose of fighting or any animal trained or bred for fighting.
 - (d) Any animal which is urged by its owner or keeper to attack, or whose owner or keeper threatens to cause such animal to attack, any law enforcement officer, while such officer is engaged in the performance of official duty and when such animal has the apparent ability to cause injury or harm to such officer.
 - (e) Any breed dog or other animal that bites or attacks a person, or that bites or attacks and causes serious injury or death to another dog or animal, while the other dog or animal is on the property or under the control of its owner. However, a dangerous animal *does not* include any of the following under this sub-paragraph:
 - (i) An animal that bites or attacks a person who is knowingly trespassing on the property of the animal’s owner;
 - (ii) An animal that bites or attacks a person who provokes or torments the animal;
 - (iii) An animal that is responding in a manner that an ordinary and reasonable person would conclude was designed to protect a person if that person is engaged in a lawful activity or is the subject of an assault.
2. *“Own”* or *“Keep”* means to own, keep, harbor, control, manage, possess, maintain, or have charge or custody of or provide care for.
3. *“Owner”* or *“Keeper”* means any person who owns or keeps a dangerous animal or a potentially dangerous animal.

4. *“Person”* includes any natural person, association, partnership, organization, company or corporation.

5. *“Potentially Dangerous Dog”* means a dog that poses a threat to public safety as demonstrated by any of the following behaviors:

- (a) Causing an injury to another dog or domestic animal that is less severe than a serious injury;
- (b) Without provocation, chasing or menacing a person, another dog or domestic animal in an aggressive manner;
- (c) Running at large and impounded by an animal control agency or agencies three or more times within any twelve-month period; or
- (d) Acting in a highly aggressive manner within a fenced yard or enclosure that the dog reasonably appears to be able to jump over or escape.

6. *“Proper Enclosure”* means secure confinement indoors or secure confinement in a locked, fenced pen, yard, or structure measuring at least six feet in width, 12 feet in length, and six feet in height, capped if there is a doghouse inside or if a dog can climb the fence, with secure sides, top and bottom, which provides proper protection from the elements for the dog, prevents the entry of young children, and is designed to prevent the dog from escaping. An invisible fence does not constitute a proper enclosure.

7. *“Provoke”* means to perform a willful act or omission that an ordinary and reasonable person would conclude is likely to precipitate the bite or attack by an ordinary dog or animal.

8. *“Registered Dangerous Dog or Potentially Dangerous Dog”* means a dangerous dog by definition, which has been properly registered within thirty days of the effective date of this ordinance and in accordance with Section 5 hereof.

9. *“Responsible Person”* means a person who is familiar with the dog and has the size and experience to be able to keep the dog under complete control at all times.

10. *“Serious Injury”* means permanent, serious disfigurement, serious impairment of health, or serious impairment of a bodily function.

11. *“Suitable Leash”* means both that the dog is attached to a leash that is no more than four feet in length and of such material that the leash is capable of and does restrain the type and size of dog to which it is attached; and that such a leash is continuously held by a person who is reasonably able to and does restrain and prohibit the dog from being out of that person’s physical control. A leashed dog that chases a person or domesticated animal a greater distance than four feet or that bites a person or domesticated animal constitutes prima facie evidence that such dog is not kept on a suitable leash.

12. *“Torment”* means an act or omission that causes unjustifiable pain, suffering, and distress to a dog, or causes mental and emotional anguish in the dog as evidenced by its altered behavior, for a

purpose such as sadistic pleasure, coercion, or punishment that an ordinary and reasonable person would conclude is likely to precipitate a bite or attack.

35.292 – Sec. 2. Determination of Dangerous Dog.

A. The Animal Control Officer shall have the authority to make a determination that a dog is dangerous or potentially dangerous, as defined in this ordinance, upon the complaint of any person that a dog is dangerous or potentially dangerous. When the Animal Control Officer classifies any dog as a dangerous dog or potentially dangerous dog under this ordinance, the Animal Control Officer shall notify the dog's owner of such classification as follows:

- (1) The notice shall be in writing and mailed by certified mail to the owner's last known address. If a dog has more than one owner, notice to any one owner shall be sufficient.
- (2) The notice shall include a summary of the findings that form the basis for the dog's classification as dangerous or potentially dangerous.
- (3) The notice shall be dated and shall state that the owner has a right to request a hearing on the classification within 15 days from the date of the notice.
- (4) The notice shall state that if a hearing is requested on the classification, the City Manager shall conduct the hearing.
- (5) The notice shall state that if the owner does not request such a hearing within 15 days from the date of the notice, the classification of the dog as dangerous or potentially dangerous shall be final and conclusive for all purposes under this ordinance.
- (6) The notice shall include a form to request a hearing before the City Manager and shall provide specific instructions on mailing or delivering such a request.

B. When the City Manager receives a request for a hearing from an owner, a hearing shall be scheduled within 30 days of receipt of the request. At least five days prior to the hearing, the owner shall be provided written notice of the date, time and place of the hearing. At the hearing, the owner shall be given the opportunity to testify and to present evidence. The City Manager shall also receive such other evidence and hear such other testimony as he/she may find reasonably necessary to make a determination to sustain, modify or overrule the classification of the dog by the Animal Control Officer. The City Manager shall notify the owner in writing by certified mail of its determination on the matter. If the determination is made that the dog is a dangerous dog or a potentially dangerous dog, the notice shall specify the date upon which that determination is effective.

C. If the identity of the owner of a dog that the Animal Control Officer has classified as a dangerous dog or a potentially dangerous dog cannot be determined, the dog shall be immediately confiscated, with notice of same and a description of the dog given to the Macomb County Sheriff's Office and the Macomb County Animal Control Shelter. If the dog's owner claims such dog, the dog shall be released to its owner, together with a copy of the notice specified in Subsection A of this section. If the dog remains unclaimed for seven days, the dog shall be turned over to a local animal welfare organization or examined by a veterinarian and/or a local animal welfare organization to determine the viability of the dog or appropriate course of destruction of the dog, if necessary.

35.293 – Sec. 3. Requirements for Possession of Dangerous Dog.

A. Any owner of a dangerous dog shall be jointly and several responsible with all other owners of such dog for compliance with the requirements of this section.

B. No person shall own, possess, keep, harbor, or have custody or control of a dangerous dog, except in compliance with all of the following requirements:

- (1) A dangerous dog shall not be permitted to remain in the City unless it is properly registered as provided in this ordinance and as otherwise required by law or ordinance.
- (2) Except under the circumstances otherwise specifically permitted by this ordinance, a dangerous dog shall at all times be maintained inside a proper enclosure.
- (3) The premises where a dangerous dog is kept shall be posted with a clearly visible sign warning that there is a dog on the premises that presents a danger to human beings. Such sign shall also include a symbol sufficient to convey without words the message that there is a dog on the premises that presents a danger to human beings.
- (4) The owner of a dangerous dog shall, at the owner's option and expense, by or under the supervision of a licensed veterinarian, have an identification number tattooed upon the animal or have a microchip injected under the animal's skin. An identification number shall be tattooed on the upper inner left rear thigh of the dog by means of indelible or permanent ink.
- (5) The owner of a dangerous dog shall at all times maintain a policy of insurance in a minimum amount of \$250,000 to cover claims for any personal injuries inflicted by the dog, which policy shall be issued by an insurer authorized to transact business in the State of Michigan.
- (6) Within 30 days after the final determination date, the owner of a dangerous dog and the dangerous dog shall begin attending, and within 90 days after the final determination date, successfully complete an animal obedience class approved by the City Manager and produce evidence of such attendance and successful completion.

35.294 – Sec. 4. Requirements for Possession of Potentially Dangerous Dog.

A. Any owner of a potentially dangerous dog shall be jointly and severally responsible with other owners of such dog for compliance with the requirements of this section.

B. No person shall own, possess, keep, harbor, or have custody of a potentially dangerous dog except in compliance with all of the following requirements:

- (1) A potentially dangerous dog shall not be permitted to remain in the City unless it is properly registered as provided in this ordinance and as otherwise required by law or ordinance.
- (2) Except under the circumstances otherwise specifically permitted by this ordinance, a potentially dangerous dog shall at all times be maintained inside a proper enclosure.

- (3) The premises where a potentially dangerous dog is kept shall be posted with a clearly visible sign warning that there is a dog on the premises that is potentially dangerous to human beings. Such sign shall also include a symbol sufficient to convey without words the message that there is a dog on the premises that presents a potential danger to human beings.
- (4) The owner of a dangerous dog shall, at the owner's option and expense, by or under the supervision of a licensed veterinarian, have an identification number tattooed upon the animal or have a microchip injected under the animal's skin. An identification number shall be tattooed on the upper inner left rear thigh of the dog by means of indelible or permanent ink.
- (5) Within 30 days after the final determination date, the owner of a potentially dangerous dog and the potentially dangerous dog shall begin attending, and within 90 days after the final determination date, successfully complete an animal obedience class approved by the City Manager and produce evidence of such attendance and successful completion.

35.295 – Sec. 5. Registration of Dangerous Dog and Potentially Dangerous Dog.

A. No dangerous dog or potentially dangerous dog shall be permitted to remain in the City unless it is registered in accordance with this ordinance. In addition to the annual registration and/or licensing fees otherwise required by law and ordinance, the owner of a dangerous dog or a potentially dangerous dog shall pay an annual registration fee to be set by resolution of the City Commission and shall register the dog with the Macomb County Sheriff's Office and/or City Clerk as a dangerous dog or a potentially dangerous dog, according to the classification and determination previously made under this ordinance. No dangerous dog or potentially dangerous dog shall be registered unless the owner can provide sufficient evidence that all of the provisions in § 35.293 - Sec. 3 or § 35.294 - Sec 4, as applicable, have been and are being met.

B. The registration provided by this section shall be non-transferable. The registration shall be renewed annually or upon the earlier of the transfer of ownership or possession of the dog or a change in the location of the dog's primary habitat.

35.296 – Sec. 6. Transfer of ownership or possession.

Upon the transfer of ownership or possession of any dangerous dog or potentially dangerous dog, the transferor shall provide the Macomb County Sheriff's Office and/or City Clerk with the name, address and telephone numbers of the new owner of the dog and the effective date of the transfer. Any transferee of a dangerous dog or potentially dangerous dog shall be presumed to have notice of the dog's classification as such.

35.297 – Sec. 7. Notice to Macomb County Sheriff.

The owner of a dangerous dog or potentially dangerous dog shall notify the Macomb County Sheriff's Office and/or City Clerk in person or by telephone within 24 hours of the occurrence of any of the following events:

- (1) The dog has escaped or has otherwise ceased to be in the custody of the owner for any reason, unless the owner knows such dog to be physically secured and restrained or confined in the custody of another competent adult.
- (2) The dog has attacked a human being.
- (3) The dog has been sold, given or otherwise transferred to the ownership or possession of another person.
- (4) The dog has died.
- (5) The dog's primary habitat will no longer be in the City of Mount Clemens.

35.298 – Sec. 8. Restraints When Outside Proper Enclosure.

It shall be unlawful for the owner of a dangerous dog or a potentially dangerous dog to permit the dog to be outside a proper enclosure unless the dog is properly muzzled (if a dangerous dog), restrained on a suitable leash, and under the physical restraint of a responsible person at all times. If muzzled, the muzzle shall be made in a manner that will not cause injury to the dog or interfere with its vision or respiration, but shall prevent the dog from biting any person or animal.

35.299 – Sec. 9. Confiscation and Disposition of Dog.

A dangerous dog shall be immediately confiscated by the Macomb County Sheriff's Office and/or the Animal Control Office upon the determination that one or more of the following circumstances exists:

- (1) The owner of the dog does not have the proper liability insurance required by §35.294 - Sec 4.
- (2) The dog is not validly and currently registered as is required by §35.295 - Sec. 5.
- (3) The dog is not maintained in a proper enclosure as is required by §35.293 - Sec. 3.
- (4) The dog is not under the restraints required by §35.298 - Sec. 8, whether or not such dog is then in the custody or possession of its owner.
- (5) The owner has failed to take the dog to obedience classes as required by §35.293 - Sec. 3.

B. A potentially dangerous dog shall immediately be confiscated upon the determination that one or more of the following circumstances exists:

- (1) The dog is not validly and currently registered as required by §35.295 - Sec. 5.
- (2) The dog is not maintained in a proper enclosure as is required by §35.294 - Sec. 4.
- (3) The dog is not under the restraints required by §35.298 - Sec. 8, whether or not such dog is then in the custody or possession of its owner.
- (4) The owner has failed to take the dog to obedience classes as required by §35.294 - Sec. 4.

C. Any dog that is confiscated under either Subsection A or B of this section, shall be returned to its owner upon the owner's compliance with the provisions of this ordinance and upon the payment of the actual costs of boarding the dog, plus a confiscation fee to be established by resolution of the City Commission. The foregoing shall be in addition to any penalties otherwise provided for under this ordinance.

D. If the confiscated dog remains unclaimed for a period of seven days after written notice of the confiscation to the owner, or if the identity of the owner cannot be determined and seven days have passed after a description of the dog has been given to the Macomb County Sheriff's Office and the Macomb County Animal Shelter, then the dog shall be turned over to a local animal welfare organization or examined by a veterinarian and/or a local animal welfare organization to determine the viability of the dog or appropriate course of destruction of the dog, if necessary.

35.300 – Sec. 10. District Court Action.

A. In lieu of the notice and hearing requirements in this ordinance, the Animal Control Officer may file a sworn complaint in the District Court alleging that the dog has, without provocation, attacked a person, or has attacked a dog or other domestic animal and has caused serious injury or death to the dog or domestic animal. The District Court shall issue a summons ordering the owner to appear to show cause why the dog should not be destroyed.

B. Upon the filing of a sworn complaint as provided in Subsection A, the District Court shall order the owner to immediately turn the dog over to a proper animal control authority, an incorporated humane society, a licensed veterinarian, or a boarding kennel, at the owner's option, to be retained by them until a hearing is conducted and a decision is made for the disposition of the dog. The owner shall notify the person who retains the dog under this section of the complaint and order. The expense of the boarding and retention of the dog is to be borne by the owner.

C. After a hearing, the Court may order the destruction of the dog at the expense of the owner, if the dog is found, without provocation, to have attacked a person, or to have attacked a dog or domestic animal and caused serious injury or death to the dog or domestic animal. If the Court does not order the destruction of the dog, the Court shall order the owner of the dog to take whatever action the Court deems necessary to protect the public from the dog.

D. After a hearing, if the Court finds that the dog, without provocation, did not attack a person, or did not attack a dog or domestic animal and cause serious injury to the dog or domestic animal, but that the dog is a potentially dangerous dog, the Court shall notify the Animal Control Officer of its finding, and shall order the owner of the dog to take whatever action the Court deems necessary to protect the public from the dog.

35.301 – Sec. 11. Review of Potentially Dangerous Dog Classification.

The owner of a dog that has been determined to be a potentially dangerous dog shall be given the opportunity to request that the classification of the dog as a potentially dangerous dog should be reconsidered and removed. Such request may be granted by the District Court or City Manager, as applicable, if the owner demonstrates that the dog has been incident-free for more than 18 months, the dog and owner have successfully completed obedience training approved by the City Manager, and the owner has complied in all respects with the provisions of this ordinance and any applicable Court orders.

35.302 – Sec. 12. Violations and Penalties.

In addition to any penalties set forth elsewhere in this ordinance and any penalties set forth in state law, the owner of a dangerous or potentially dangerous dog that fails to comply with the provisions of this ordinance shall be guilty of a misdemeanor, punishable by a fine of up to \$500, up to 90 days in jail, or both, in the discretion of the Court.