

ORDINANCE NO. 1142

**AN ORDINANCE TO AMEND CHAPTER 5 OF THE CODE OF ORDINANCES
TO GOVERN THE KEEPING OF DOMESTIC ANIMALS**

THE CITY OF ESCANABA ORDAINS:

CHAPTER I

Chapter 5 of the Escanaba Code of Ordinances is hereby amended to read as follows:

ARTICLE I - General

Sec. 5-1. - Enforcement of article.

It shall be the duty of the public safety department to investigate, administer, and enforce this chapter. If, after investigation, the public safety director, or his authorized representative, determines that a person is in violation of this article, he/she is authorized to issue a municipal civil infraction citation to the alleged violator.

ARTICLE II – Livestock and Poultry

Sec. 5-4. - Keeping and feeding of livestock or poultry prohibited.

(a) Two (2) years from April 5, 1990, no person, partnership, or corporation shall own, keep, harbor, or have custody over any livestock or any poultry within the city limits except in conformance with the zoning code.

(b) In the event that any livestock and/or poultry dies within the city, the owner or person in possession of the same shall within twelve (12) hours thereafter cause the carcass to be removed beyond the city limits or bury the same so that the entire carcass shall be covered within earth of not less than three (3) feet in depth above such carcass.

(c) No owner or custodian of any livestock or poultry shall permit such livestock or poultry to run at large within the city limits.

(d) No person shall drive, ride, or lead any livestock or poultry on or along any public property without the expressed written consent of the city manager or on private property without the expressed consent of the owner of said private property.

(e) Except as permitted by the zoning code, no livestock or poultry shall be kept in any pen, corral, place of confinement, or shelter/building unless located on property which includes the residence of the owner or lessor of the property so as to provide twenty-four-hour supervision of said livestock and/or poultry.

(f) No person shall feed livestock or poultry except in compliance with the ordinances and zoning code of the city.

(g) "Livestock" means horses, stallions, colts, geldings, mares, sheep, rams, lambs, bulls, bullocks, steers, heifers, cows, calves, mules, jacks, jennets, burros, goats, kids and swine, and any fur bearing animals being raised in captivity.

(h) "Poultry" means any chickens, turkeys, ducks, game birds, sea gulls, or pigeons.

Sec. 5-5. – Penalty for Violation of Article.

Any person violating any provisions of this article shall be responsible for a civil infraction. The penalty for the first offense shall be \$50.00 and, for the first repeat offense, \$250.00. For any second or subsequent repeat offense, the fine shall be no more than \$500.00.

ARTICLE III. – Cats

Sec. 5-6. – Purpose of Article.

The following article governs the number of cats that may be kept by any person in the city. Provisions are made for the impoundment and disposal of sick or abandoned cats under prescribed conditions. Violation of this article shall constitute a civil infraction.

Sec. 5-7. – Prohibited Acts.

(a) It shall be unlawful for any person to own, possess, shelter, keep or harbor more than four (4) cats over four (4) months of age at any one time in one residential building and garage, or in any business building or any other building, or on a residential, business or other lot in the city. The provisions of this section shall not apply to cats that are being kept by a veterinarian or in a veterinary hospital or by an established commercial pet shop or licensed animal shelter or licensed kennel.

(b) It shall be unlawful to own, possess, shelter, keep, harbor or maintain any cats under such conditions or in such a manner as to create a nuisance by way of noise, odor, or menace to health or other like conditions. It shall be unlawful for the owner or any other person having the possession, care, custody, or control of cats to permit any cat to run at large upon the public streets, walks, parks or other public places within the city, unless such cat shall be restrained by a leash or by personally accompanying such cat. It shall be unlawful for the owner, or any other person having the possession, care, custody or control of cats to permit any cat to go upon any private property within the city without the permission of the owner or occupant of such private property.

Sec. 5-8. – Rabies provision.

Any person who shall have in their possession any animal which has contracted rabies, or which has been exposed or subjected to same, or which is suspected of having rabies, or which has bitten any person, shall, upon demand of any law enforcement officer, produce and surrender such animal to the officer(s), to be held for observation for a minimum of ten (10) days, or confine the animal to the owners premises, at the discretion and direction of an officer. It shall be the duty of any person owning or harboring an animal which has been attacked or bitten by another dog, or other animal, showing the symptoms of rabies, to immediately notify law enforcement that such person has such an animal in their possession.

Sec. 5-9. – Impoundment; Disposition.

It shall be the duty of the Public Safety to seize, receive possession of, and impound any cat found anywhere in the city contrary to the provisions of this

article. All impoundment processes and ultimate disposition of any such cats, or litters of cats, shall be through and under the jurisdiction of the departmental offices of the Animal Shelter. Owners or other claimants seeking to repossess or otherwise claim an impounded cat, partial or whole litters of cats, shall be liable for costs of care and maintenance of the same, and shall render payment of any assessed costs to the Animal Shelter.

Sec. 5-10. - Licensing and Vaccinations.

No person shall own, keep or harbor any cat the age of four (4) months or over, within the City of Escanaba unless the cat is vaccinated and licensed. The animal can be licensed at a local veterinarian. Vaccinations are to include rabies vaccination.

Sec. 5-11. – Penalty for Violation of Article.

Any person violating any provisions of this article shall be responsible for a civil infraction. The penalty for the first offense shall be \$50.00 and, for the first repeat offense, \$250.00. For any second or subsequent repeat offense, the fine shall be no more than \$500.00.

ARTICLE IV. - Dogs

Sec. 5-16. – Owner Responsibility.

All animals shall be kept under control by the owner or restraint of a leash while off of the property of the animal's owner.

No person shall leave any animal in any standing or parked vehicle in such a way as to endanger the animal's health, safety or welfare. An officer is hereby authorized to use reasonable force to remove the animal from the vehicle whenever it appears that the animal's health, safety or welfare is endangered.

Sec. 5-17. - Kennels restricted without permission.

No person shall hereafter establish or maintain any boarding kennel, or any breeding kennel, or permit any such kennel to be maintained on any premises owned, leased or occupied by him within the limits of the city, except in compliance with the zoning code of the city.

Sec. 5-18. - Restrictions.

It shall be unlawful for any person to own, possess, shelter, keep or harbor more than four dogs over four (4) months of age, at any one time, in one residential building and garage, or in any business building or any other building, or on a residential, business or other lot in the city. The provisions of this section shall not apply to dogs that are being kept by a veterinarian or in a veterinary hospital, an established commercial pet shop or licensed animal shelter or licensed kennel.

Sec. 5-19. - Animal defecation.

(a) No owner or person having custody of any dog or other animal shall permit such dog or other animal to defecate on any public park grounds, school grounds, public street, alley, sidewalk or any other public grounds, or any private property within the city other than the premises of the owner or person having custody of such dog or other animal unless the defecation is immediately

removed by the owner or person having custody of such dog or animal. A person violating this subsection is responsible for a civil infraction with a fine of fifty dollars (\$50.00) for the first offense and a fine of one hundred dollars (\$100.00) for each subsequent offense.

(b) All persons having in their custody or control a dog or other animal in any public park, grounds, school grounds, public street, alley, sidewalk or any other public grounds, or any private property within the city other than the premises of the owner or person having custody of such dog or other animal, shall have in their immediate possession the means for picking up the defecation of a dog or other animal. A person violating this subsection is responsible for a civil infraction with a fine of ten dollars (\$10.00).

(c) This section shall not apply to guide, hearing or service dogs accompanying a blind person, deaf person, audibly impaired person or physically limited person.

(d) No person owning, harboring or keeping a dog within the city shall permit any waste matter from the dog to collect and remain on the property of the owner or custodian, or on the property of others so as to cause or create an unhealthy, unsanitary, dangerous or offensive living condition on the owner's or custodian's property, or to abutting property owners.

(e) Any person violating any provision of this article shall be responsible for a civil infraction. Fines may be adjusted at the sole discretion of the city council.

Sec. 5-20. – Barking, yelping or howling.

No person shall own, keep or harbor a dog which by loud or frequent or habitual barking, yelping or howling shall cause a serious annoyance to or disturb the peace of the neighborhood.

Sec. 5-21. – Injured Animal, unlicensed or Animal running at large.

If an officer comes across an animal that is critically injured in the opinion of the officer, it can be immediately disposed of in a humane manner.

Officers shall impound any animal they find running at large and not under control, once they have made an attempt to return the animal to its owner.

Officers shall impound any animal not duly licensed as provided by law.

Officers shall investigate complaints of cruelty to animals and the seizure or impounding of any animal which has been determined upon investigation to be subject to such cruelty.

Sec. 5-22. - Licensing and Vaccinations.

No person shall own, keep or harbor any dog the age of four (4) months or over, within the City of Escanaba unless the dog is vaccinated and licensed. This is to include rabies vaccination. The licensing can be done with a local veterinarian.

Sec. 5-23. – Penalty for violation of article.

Any person violating any provisions of this article shall be responsible for a civil infraction. The penalty for the first offense shall be \$50.00 and, for the first repeat offense, \$250.00. For any second or subsequent repeat offense, the fine shall be no more than \$500.00.

ARTICLE V. – Vicious Dogs

Sec. 5-29. – Definitions.

Officer means any person employed whose duty it is to preserve peace or to make arrests or to enforce the law.

Impounded means taken into the custody of and taken to the Animal Shelter.

Owner means any person, firm, corporation, organization or department possessing or harboring or having the care or custody of a dog.

Person means a natural person or any legal entity, including but not limited to, a corporation, firm, partnership or trust.

Minor means a person under the age of eighteen (18).

Unconfined means any dog which is not securely confined indoors or confined in a securely enclosed and locked pen or structure upon the premises of the owner of the dog. The pen or structure must have secure sides and a secure top attached to the sides. If the pen or structure has no bottom secured to the sides, the sides must be embedded into the ground no less than one foot. All such pens or structures must be adequately lighted and kept in a clean and sanitary condition.

Vicious dog shall include the following:

- (1) Any dog with a known vicious propensity, tendency or disposition to attack unprovoked, to cause injury to, or otherwise threaten the safety of human beings or domestic animals.
- (2) Any dog which because of its vicious propensity is capable of inflicting serious physical harm or death to humans, and which would constitute a danger to human life or property if it were not kept in the manner required by this chapter.
- (3) Any dog which, without provocation, attacks or bites, or has attacked or bitten a human being or domestic animal.
- (4) Any dog owned or harbored primarily or in part for the purpose of dog fighting, or any dog trained for dog fighting.

Sec. 5-30. – Declaration of a Vicious Dog.

Notwithstanding the definition of a vicious dog above, no dog may be declared vicious if an injury or damage is sustained by a person who, at the time such injury or damage was sustained, was committing a willful trespass or other tort upon premises occupied by the owner or keeper of the dog, or was teasing, tormenting, abusing or assaulting the dog or was committing or attempting to commit a crime. If a minor is under the age of seven years of age at the time the damage or injury was sustained, it shall be rebuttably presumed that such minor was not committing a trespass or other tort or teasing, tormenting or abusing the dog.

No dog may be declared vicious if an injury or damage was sustained by a domestic animal which at the time the injury or damage was sustained, was teasing, tormenting, abusing or assaulting the dog. No dog may be declared vicious if the dog was protecting or defending a human being within the

immediate vicinity of the dog from an unjustified attack or assault. The burden of proof thereon shall be upon the owner or keeper of the dog.

Sec. 5-31. – Confinement.

The owner of a vicious dog shall not permit the dog to be unconfined.

Sec. 5-32. – Leash and muzzle required.

The owner of a vicious dog shall not permit the dog to go beyond the premises of the owner unless the dog is securely muzzled and restrained by a chain or leash, and under the physical restraint of a person. 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 it from biting any human or animal.

Sec. 5-33. – Owner to display warning signs.

The owner of a vicious dog shall display in a prominent place on his premises a clearly visible warning sign indicating that there is a vicious dog on the premises. A similar sign is required to be posted on the pen or kennel of the animal.

Sec. 5-34. – Dog fighting prohibited.

No person, firm, corporation, organization or department shall possess or harbor or maintain care or custody of any dog for the purpose of dog fighting or train, torment, badger, or use any dog for the purpose of causing or encouraging the dog to attack human being or domestic animals.

Sec. 5-35. – Action for damages; destruction of offending vicious dog.

If any vicious dog shall, when unprovoked, kill or wound, or assist in killing or wounding any domestic animal, belonging to or in the possession of any person, or shall, when unprovoked, attack, assault, bite or otherwise injure any human being or assist in attacking, assaulting, biting or otherwise injuring any human being while out of or within the enclosure of the owner or keeper of such vicious dog, or while otherwise, on or off the property of the owner or keeper whether or not such vicious dog was on a leash and securely muzzled or whether the vicious dog escaped without fault of the owner or keeper, the owner or keeper of such dog shall be liable to the person aggrieved as aforesaid, for all damage sustained, to be recovered in a civil action, with costs of suit. It is rebuttably presumed as a matter of law that the owning, keeping or harboring of a vicious dog in violation of this chapter is a nuisance. It shall not be necessary, in order to sustain any such action, to prove that the owner or keeper of such vicious dog knew that such vicious dog possessed the propensity to cause such damage or that the vicious dog had a vicious nature. Upon such attack or assault, the police department is hereby empowered to confiscate and destroy such vicious dog, if the conduct of such vicious dog or its owner or keeper constituted a violation of the provisions of this chapter, punishable by the confiscation and destruction of the animal.

Sec. 5-36. – Exemptions.

The provisions of this article shall not apply to K-9 or other dogs owned by any police department or any law enforcement agency of the State of Michigan, or the United States or a branch of the armed services of the United States.

Sec. 5-37. – Complaints.

Officers shall investigate complaints of animals alleged to be dangerous to persons or property, and the seizure or impounding of such animals.

Officers shall investigate animal bite cases involving human exposure, and the impounding or quarantining of the animal for rabies examination, in accordance with the rabies provision.

Sec. 5-38. – Rabies provision.

Any person who shall have in their possession any animal which has contracted rabies, or which has been exposed or subjected to same, or which is suspected of having rabies, or which has bitten any person, shall, upon demand of any law enforcement officer, produce and surrender such animal to the officer(s), to be held for observation for a minimum of ten (10) days, or confine the animal to the owners premises, at the discretion and direction of an officer. It shall be the duty of any person owning or harboring an animal which has been attacked or bitten by another dog, or other animal, showing the symptoms of rabies, to immediately notify law enforcement that such person has such an animal in their possession.

Sec. 5-39. – Penalty for violation of this Article.

(a) Any person violating any provisions of this Article shall be subject to a fine not exceeding **Five Hundred (\$500.00) Dollars** plus costs of prosecution and/or imprisonment not exceeding **ninety (90) days** in jail.

(b) If the owner or keeper of a dog impounded for an alleged violation of this Article shall believe that there shall not have been a violation of such sections hereof, such owner or keeper may petition the district court which has jurisdiction asking that the impounded dog not be destroyed. The impounded dog shall not be destroyed pending resolution of such owner's or keeper's petition if the petition shall have been filed within five days of impoundment of such dog and notice shall have been served within five days of the filing of the petition upon the dog officer or keeper of the dog pound. The hearing shall be conducted within seven days from serving of the notice, unless continued to a later date by the court. The decision of the district court may be appealed to the circuit court by any aggrieved party within 48 hours of the decision. The dog shall remain impounded pending the appeal. A hearing de novo, without a jury, shall be conducted within seven days of the appeal, unless adjourned to a later date by the court. The decision of the circuit court shall be final and conclusive upon all the parties thereto. However, any law enforcement officer shall have the right to declare a dog to be vicious for any actions of the dog subsequent to the date of the violation. If the court shall find that there shall not have been a violation of this Article, such dog may be released to the custody of the owner or keeper upon payment to the animal shelter of the expense of keeping such dog. All issues herein shall be decided by the preponderance of the evidence.

Sec. 5-40. – Liability of parents for damages caused by dog owned by minor.

In the event that the owner or keeper of the vicious dog is a minor, the parent or guardian of such minor shall be liable for all injuries, property damage, and fines sustained by any person or domestic animal caused by an unprovoked attack by said vicious dog.

CHAPTER II

SAVINGS CLAUSE

If any section, subsection, sentence, clause or phrase of the within Ordinance is, for any reason, held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance, section, subsection, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional.

CHAPTER III

CONFLICTING ORDINANCES REPEALING CHAPTER

All Ordinances or parts of Ordinances in conflict with the provisions of this Ordinance are hereby repealed.

CHAPTER IV

EFFECTIVE DATE

This Ordinance shall be in full force and effect ten (10) days after its passage and publication.

APPROVED

APPROVED

Ralph B.K. Peterson
City Attorney

Leo Evans
Mayor

Date Approved: 11/07/2013

ATTEST:

Date Published: 11/13/2013

Robert S. Richards
City Clerk

I hereby certify that the foregoing constitutes a true and complete copy of an Ordinance duly adopted by the City Council of the City of Escanaba, County of Delta, Michigan, at a Regular Meeting held on Thursday the 7th day of November 2013, and was published in the Daily Press, a newspaper of general circulation in the City of Escanaba on Wednesday, November 13, 2013, and that said meeting was conducted and public notice of said meeting was given pursuant to and in full compliance with the Open Meetings Act, being Act 267, Public Acts of Michigan, 1976, and that the minutes of said meeting were kept and will be or have been made available as required by said Act.

Robert S. Richards, CMC
City Clerk