

## **ORDINANCE NO. 1733**

### **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FONTANA, CALIFORNIA AMENDING DIVISION 3 OF ARTICLE III OF CHAPTER 4 OF THE FONTANA MUNICIPAL CODE REGARDING VICIOUS DOGS, BITING DOGS, AND QUARANTINE THEREOF.**

**WHEREAS**, the City of Fontana, California (the "City") is a municipal corporation, duly organized under the constitution and laws of the State of California; and

**WHEREAS**, pursuant to Chapter 4 of the Fontana Municipal Code, the City regulates animals, including, but not limited to, dogs; and

**WHEREAS**, pursuant to Division 3 of Article III of Chapter 4 of the Fontana Municipal Code, the City regulates biting dogs, as well as dogs that are vicious or dangerous; and

**WHEREAS**, incidents of dogs attacking, biting, or menacing persons or other animals pose a severe risk to the public health, safety, and wellbeing of the residents of the City and the animals of the City; and

**WHEREAS**, the Fontana Municipal Code currently requires any person who owns or has charge, custody, control, or possession of a vicious or dangerous dog to quarantine the dog in place by causing it to be leashed, or confined within a fenced or enclosed area at all times in order to mitigate the risk of the dog's attacking, biting, or menacing persons or other animals; and

**WHEREAS**, the Fontana Municipal Code's provisions for quarantining a vicious or dangerous dog presently do not include a provision authorizing animal control officers to quarantine a vicious or dangerous dog in the City's animal shelter, as an alternative to quarantining the dog in place; and

**WHEREAS**, the authority and discretion of animal service officers to seize, impound, and quarantine a vicious or dangerous dog in the City's animal shelter, as opposed to allowing the dog to be quarantined in place, would permit the City to pursue a quarantine that would provide for greater public safety than a quarantine in place; and

**WHEREAS**, the authority and discretion of animal services officers to quarantine a vicious or dangerous dog in the City's animal shelter would also (1) augment the City's ability to control a vicious or dangerous dog that poses an immediate threat to public safety and has the potential for injuring further persons or animals if left in place, (2) remove a vicious or dangerous dog from an environment that may be the same environment where the dog bit or attacked in the first instance, and (3) reduce liability for the City if a vicious or dangerous dog known to the City for its dangerous

propensities escaped from its quarantine in place and injured further persons or animals; and

**WHEREAS**, section 31683 of the California Food and Agricultural Code permits a city or county to adopt and enforce its own program for the control of potentially dangerous or vicious dogs that may incorporate the State's provisions or may impose a more restrictive program to control potentially dangerous or vicious dogs, which could include giving authority and discretion to animal control officers to quarantine a vicious or dangerous dog securely in the City's animal shelter; and

**WHEREAS**, section 31625 of the California Food and Agricultural Code permits an animal control officer to determine that probable cause exists to believe a dog in question poses an immediate threat to public safety and, as a result, the animal services officer may seize and impound the dog pending hearings on the dog. Pursuant to this section, the owner or keeper of the dog is liable to the city that impounds the dog for the costs and expenses of keeping the dog if the dog is later adjudicated potentially dangerous or vicious; and

**WHEREAS**, section 31625 of the California Food and Agricultural Code also permits an animal service officer who impounds a dog believed to pose a threat to public safety to confine the dog at the owner's expense in a department-approved kennel or facility, which would include the City's animal shelter; and

**WHEREAS**, the City Council finds that the authority and discretion of animal services officers to quarantine a vicious or dangerous dog securely in the City's animal shelter, where such quarantine will provide for greater public safety than a quarantine in place, is preferred to not specifying such authority and discretion in the present Fontana Municipal Code; and

**WHEREAS**, the City Council determines that the authority and discretion of animal services officers to quarantine a vicious or dangerous dog securely in the City's animal shelter would be most meaningful when combined with clarifying amendments that elucidate the definition of vicious or dangerous dog and the circumstances where discretion to quarantine in the City's animal shelter may arise; and

**WHEREAS**, the City Council desires to amend Division 3 of Article III of Chapter 4 of the Fontana Municipal Code to (1) provide the authority and discretion to animal services officers to quarantine a vicious or dangerous dog securely in the City's animal shelter where the dog poses an immediate threat to public safety and such quarantine would provide for greater public safety than a quarantine in place and (2) to further clarify the definition of vicious or dangerous dog; and

**WHEREAS**, all other legal prerequisites to the adoption of this Ordinance have occurred.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF FONTANA, CALIFORNIA DOES HEREBY ORDAIN AS FOLLOWS:**

**SECTION 1.** Incorporation of Recitals. The above recitals are true and correct and are incorporated herein by this reference.

**SECTION 2.** Section 4-131 of Division 3 of Article III of Chapter 4 of the Fontana Municipal Code is hereby amended to read in its entirety as follows:

“Sec. 4-131. - Confinement.

- (a) No person owning or having charge, custody, control, or possession of any dog or animal suspected of having bitten any person shall permit it to run at large, or to run loose or unrestrained in the city. The fact that such dog or animal has bitten any person shall be prima facie evidence that it is a vicious or dangerous animal, and its vicious or dangerous nature shall be accepted as correct until proven otherwise.
- (b) Every person who owns or has charge, custody, control or possession of a vicious or dangerous dog or animal shall cause it at all times to be leashed, or confined within a fenced or enclosed area, provided that notice in writing to this effect has first been delivered to such person by the duly authorized or designated representatives of the city. After such notice, any person who violates and is convicted under the provisions of this section shall be guilty of a misdemeanor. After such notice, an animal services officer shall have the authority and discretion to seize, impound, and quarantine a vicious or dangerous dog in the city's animal shelter at the expense of the owner or keeper of the dog, rather than allowing the dog to be quarantined in place, where the animal services officer has determined that probable cause exists to believe the dog in question poses an immediate threat to public safety and quarantine in the city's animal shelter would provide for greater public safety.
- (c) It shall be unlawful for any person to remove from any place of isolation or quarantine any animal which has been isolated or quarantined under the provisions of this chapter, without the consent of the animal services officer. This section (c) shall not apply to an animal services officer exercising authority and discretion to seize, impound, and quarantine any animal that has been isolated or quarantined in place under the provisions of this chapter in order to quarantine such animal in the city's animal shelter.”

**SECTION 3.** Section 4-132 of Division 3 of Article III of Chapter 4 of the Fontana Municipal Code is hereby amended to read in its entirety as follows:

“Sec. 4-132. - Vicious dogs.

- (a) If it shall be determined by the animal services officer, after giving the order or quarantine mentioned in section 4-131, that the dog is a vicious dog, although not afflicted with rabies, the owner or person having charge, custody or control of a vicious dog shall keep the dog in an enclosure with a secure top when maintained unattended out-of-doors; and any enclosure for such dog kept out-of-doors must be fenced with a perimeter or area fence no less than three feet from such enclosure. The owner or person having charge, custody or control of a vicious dog shall not permit such dog to be chained, tethered or otherwise tied to any inanimate object, such as a tree, post or building. The owner or person having charge, custody or control of a vicious dog shall keep the dog while it is off its property, except when being transported securely confined within a vehicle, restrained by a leash not to exceed six feet in length, and muzzled by any means sufficient to prevent the biting of other persons or domestic animals. Failure to do so on the part of the owner or person having custody, or any violation by the owner or person having custody of the dog, of the order of the animal control officer shall constitute a violation of this article.
- (b) In determining whether or not such dog is vicious, the animal services officer shall be guided by the following:
  - (1) Whether or not the dog has bitten other persons other than on the occasion which gave rise to the operation of section 4-131;
  - (2) The circumstances surrounding the occasion indicating the temper and ferocity of the dog;
  - (3) The reputation of the dog in the community in regard to its temper and ferocity; and
  - (4) Its general menace to the public.
- (c) However, vicious dog shall mean any dog which constitutes a physical threat to a human being or any other domestic animal by virtue of a known propensity to endanger life by an unprovoked assault or bite so as to cause serious bodily harm. Any dog trained or bred, primarily or in part, to attack or fight shall constitute prima facie evidence that the dog has a known propensity to endanger

life. Despite prima facie evidence that a dog is a vicious or dangerous animal or has a known propensity to endanger life, a dog shall not be deemed vicious if it:

- (1) Attacks, bites or menaces anyone assaulting the owner of such dog, a trespasser on the property of the owner, or any person or other animal who has tormented or abused it;
- (2) Is otherwise acting in defense of an attack from a person or other animal upon the owner or other person; or
- (3) Is protecting or defending its young or other animals, provided that the responding animal services officer determines that the dog attacked, bit or menaced in order to protect or defend its young or other animals in the discretion of the animal services officer.

A dog shall not be deemed vicious if it is an official police dog.

- (d) This section shall be operative regardless of whether or not the dog in question has been vaccinated and tagged as required in sections 4-96 and 4-97.
- (e) Any dog that has been determined to be vicious or dangerous shall be registered by the owner or person having charge, custody or control of the vicious dog with the City for a period of thirty-six (36) months following the attack or bite and shall be subject to an annual fee as set by resolution of the City Council.
- (f) In order to own or have charge, custody or control of a vicious or dangerous dog, additional requirements apply. If a dog is determined to be vicious or dangerous, the responding animal services officer shall provide to the owner or person having charge, custody or control of the vicious or dangerous dog a form with the requirements for ownership or control of a vicious or dangerous dog. The owner or person having charge, custody or control of the vicious or dangerous dog must comply with all requirements for ownership or control of a vicious or dangerous dog."

**SECTION 4.** Section 4-133 of Division 3 of Article III of Chapter 4 of the Fontana Municipal Code is hereby amended to read in its entirety as follows:

"Sec. 4-133. - Notice of quarantine.

The animal control officer may, in his or her discretion, post or cause to be posted an appropriate sign on any premises where a dog, even if

vaccinated and licensed, has been quarantined pursuant to this article to warn the public of the fact. It shall be unlawful for any person to remove a sign posted pursuant to this section without permission of the animal services officer. The prohibition against removal of a sign shall not apply to an animal services officer exercising authority and discretion to seize, impound, and quarantine any animal that has been isolated or quarantined in place under the provisions of this chapter in order to quarantine such animal in the city's animal shelter."

**SECTION 5.** CEQA. This Ordinance is not a project within the meaning of Section 15378 of the State of California Environmental Quality Act ("CEQA") Guidelines, because it has no potential for resulting in physical change in the environment, directly or indirectly. The City Council further finds, under Title 14 of the California Code of Regulations, Section 15061(b)(3), that this Ordinance is nonetheless exempt from the requirements of CEQA in that the activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. The City Council, therefore, directs that a Notice of Exemption be filed with the County Clerk of the County of San Bernardino in accordance with CEQA Guidelines.

**SECTION 6.** Custodian of Records. The documents and materials that constitute the record of proceedings on which this Ordinance is based are located at the City Clerk's office located at 8353 Sierra Avenue, Fontana, CA 92335. The custodian of these records is the City Clerk.

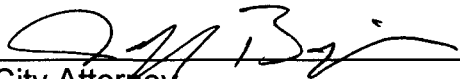
**SECTION 7.** Severability. If any section, sentence, clause or phrase of this Ordinance or the application thereof to any entity, person or circumstance is held for any reason to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. The people of the City of Fontana hereby declare that they would have adopted this Ordinance and each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

**SECTION 8.** Effective Date. This Ordinance shall become effective thirty (30) days following its adoption.

**SECTION 9.** Publication. The City Clerk shall certify to the adoption of this Ordinance. Not later than fifteen (15) days following the passage of this Ordinance, the Ordinance, or a summary thereof, along with the names of the City Council members voting for and against the Ordinance, shall be published in a newspaper of general circulation in the City of Fontana.

**APPROVED AND ADOPTED** this 8<sup>th</sup> day of September, 2015.

**READ AND APPROVED AS TO LEGAL FORM:**

  
\_\_\_\_\_  
City Attorney

I, Tonia Lewis, City Clerk of the City of Fontana, and Ex-Officio Clerk of the City Council, do hereby certify that the foregoing Ordinance is the actual Ordinance adopted by the City Council and was introduced at a regular meeting on the 25<sup>th</sup> day of August, 2015, and was finally passed and adopted not less than five days thereafter on the 8<sup>th</sup> day of September, 2015, by the following vote to wit:


**AYES:** Mayor Warren, Mayor Pro Tem Tahan, Council Members Roberts, Salazar-Wibert and Sandoval

**NOES:**


**ABSENT:**

**ABSTAIN:**

  
\_\_\_\_\_  
City Clerk of the City of Fontana

  
\_\_\_\_\_  
Mayor of the City of Fontana

**ATTEST:**

  
\_\_\_\_\_  
City Clerk