

ORDINANCE NO. 2022-04
TO ADOPT EMILY'S LAW REGARDING DANGEROUS OR VICIOUS ANIMALS

WHEREAS, this Ordinance shall be established in order to comply with the requirements, procedural steps and penalties set forth by Act NO. 2018-182 passed by the Alabama Legislature, also known as Emily's Law; and

WHEREAS, this Ordinance adopting Emily's Law shall become the new formal process for the City of Cullman when dealing with dangerous animals; and

WHEREAS, the City of Cullman has previously, under City Ordinance No. 1371, established offenses against the against the City of Cullman including as declared by laws of the State of Alabama;

BE IT ORDAINED by the City Council of the City of Cullman, Alabama, as follows:

Section I. Purpose.

The purpose of this Ordinance is to modify, amend or delete portions of the current Chapter Eight (8) dealing with animals of the Code of Ordinances of the City of Cullman, in order to follow the laws of the State of Alabama.

Section II. Definitions.

1. Chapter 8, Article I General, Section 1(a), *Dangerous/vicious animal* is hereby deleted in its entirety and replaced with the following:

Dangerous/ vicious animal is defined as:

(1) An animal that attacks, bites or inflicts severe injury to human beings, pets, companion animals, or livestock."

(2) The owner of any animal accused of being vicious is entitled to introduce evidence to the Court that the animal was provoked or that the animal's actions at the time of the alleged attack, bite or injury were justified. In regards to dogs specifically, no animal may be declared vicious based solely on the breed of said animal.

2. Chapter 8, Article I General, Section 1(a), is hereby amended to add *Physical injury* to read as follows:

Physical Injury means an injury as defined in Section 13A-1-2(12), Code of Alabama 1975.

3. Chapter 8, Article I General, Section 1(a), *Potentially dangerous animal* is hereby deleted in its entirety and replaced with the following:

Potentially dangerous animal means any animal that:

(1) Unprovoked, bites a human or domestic animal, either on public or private property;

(2) Unprovoked, chases or approaches a person or domestic animal upon the streets, sidewalks, or any public or private property in a menacing fashion or apparent attitude of attack;

(3) Is known to have a propensity, tendency, or disposition to attack unprovoked or to cause injury or otherwise to threaten the safety of humans or domestic animals on any public or private property; or

(4) After notice to appear has been delivered, upon the determination of the Court on the date to be heard, the animal has been declared potentially dangerous by the Municipal Court Judge, as provided for in this chapter.

4. Chapter 8, Article I General, Section 1(a), is hereby amended to add *Proper enclosure* of a dangerous animal and read as follows:

Proper enclosure for the confinement of an animal that has been declared dangerous means one that is suitable to prevent the entry of the general public and that does all of the following:

a. Is capable of being locked with a key or combination lock when the animal is within the structure.

b. Has secure sides and a secure top attached at all sides. All four sides of the fence or pen must be sunk at least two feet into the ground or the fence or pen must be built over a concrete pad to prevent the animal from digging out.

c. Provides adequate ventilation and protection from the elements.

d. Exhibits a sign conspicuously posted upon the pen or the structure containing the following: "Dangerous Animal

— No Trespassing.”

- e. The enclosure shall be constructed to allow the animal to stand normally and without restriction and shall be not less than four times the length of the animal and two times the width of the dog.
- f. The enclosure shall be locked at all times while the animal is inside the enclosure.
- g. The enclosure follows all building requirements of the City of Cullman
- h. Any law enforcement officer, animal control officer, or other duly designated agent or employee of the city shall be permitted the right to inspect the enclosure in which any potentially dangerous or dangerous/vicious animals are kept at any time.

5. Chapter 8, Article I General, Section 1(a), is hereby amended to add *Serious physical injury* to read as follows:

Serious physical injury means an injury as defined in Section 13A-1-2, Code of Alabama 1975.

6. Chapter 8, Article V, Dangerous and Vicious Animals, Section 198 *Procedure for determination, classification* is hereby deleted in its entirety and amended to read as follows:

Section 1 (a)(1) When a person claims that an animal is dangerous, the person shall make a sworn statement before a city magistrate setting forth the name of the animal owner, if known, the location where the animal is being kept in the city or county, and the reason he or she believes the animal to be dangerous.

(2) The sworn statement shall be delivered to an animal control officer who shall complete a dangerous animal investigation, provided however, when the sworn statement claims that an animal has caused serious physical injury or death to a person, the duties of the animal control officer, including but not limited to the dangerous animal investigation, shall be carried out by a law enforcement officer.

(b) An animal control officer is authorized to initiate a dangerous animal investigation in cases where a complaint has been made pursuant to subsection (a) and a person has been bitten, received physical injury or serious physical injury, or has died.

(c)(1) In the event a dangerous animal investigation leads an animal control officer to believe the allegation is founded, all of the following shall occur:

a. The animal control officer shall file a summons for the owner of the dog, if known, with the municipal court.

b. The animal in question shall be impounded at the county pound as described in Section 3-7A-7, Code of Alabama 1975, or municipality may enter into an agreement with an animal shelter or licensed veterinarian to impound the dog; provided, however, the owner of the animal shall be provided the opportunity to choose a veterinarian of his or her choosing to impound the animal in lieu of the county pound or animal shelter. If the animal is impounded with a veterinarian chosen by the owner of the dog, the owner of the animal shall be liable for paying to the veterinarian the cost and expenses incurred in impounding, feeding, and providing veterinary care or treatment for the dog. If the municipality impounds the dog, the owner of the animal shall be liable to the municipality for the costs and expenses incurred in impounding, feeding, and providing veterinary care or treatment for the dog.

c. The animal control officer shall send a copy of the investigation report to the county attorney, municipal attorney, or municipal prosecutor.

(2) In lieu of the investigation, the owner of the alleged dangerous animal may consent to the animal being humanely euthanized.

(d) In the event the dangerous animal investigation leads the animal control officer to believe the allegation is unfounded, the animal control officer shall advise the complainant of his or her findings and the animal control officer shall submit the results of the investigation to his or her supervisor.

(e) A copy of all investigations made pursuant to this section shall be kept on file in the police records repository.

(f) The municipal attorney, or municipal prosecutor shall be authorized to file a petition in the district court or municipal court to declare dangerous the animal that caused physical injury, serious physical injury, or death to a person in the jurisdiction of the county or municipality. The owner of the dog, if known, shall be served with a copy of the petition.

(g) An animal that is the subject of a dangerous animal investigation may not be relocated and ownership may not be transferred pending the outcome of the investigation and hearing to determine whether to declare the animal to be dangerous.

(h) The court hearing shall be held as soon as practicable. At the hearing, the municipal attorney, or municipal prosecutor shall present evidence that the animal is dangerous. To declare the animal dangerous the court shall find by reasonable satisfaction that the animal bit, attacked, or caused physical injury, serious physical injury, or death

to a person without justification.

(1) If the court determines that the animal is dangerous and has caused serious physical injury or death to a person, the court shall order the animal to be humanely euthanized by a licensed veterinarian or an authorized animal control official.

(2) If the court determines that the animal is dangerous, but has not caused serious physical injury or death to a person, the court shall determine whether the animal has a propensity to cause future serious physical injury or death. If the court determines by reasonable satisfaction that the animal has such a propensity, the court may order the animal to be humanely euthanized by a licensed veterinarian or an authorized animal control officer or the court may order the animal be returned to its owner pursuant to all of the following conditions:

a. The animal shall be held in impound until the owner complies with all orders of the court, but if the owner fails to comply with all orders of the court within 30 days of the court's order, the animal shall be humanely euthanized.

b. The dangerous animal shall be microchipped.

c. The owner of the dangerous animal shall provide a copy of the certificate of the current rabies vaccination of the dog.

d. The dangerous animal shall be spayed or neutered.

e. The owner of the dangerous animal shall be required to pay all expenses involved with the investigation, pickup, and impoundment, and any court costs or fees related to the hearing to determine whether the animal is dangerous.

f. The owner of the dangerous animal shall be required to pay an annual dangerous animal registration fee of one hundred dollars (\$100) to the municipality for an animal deemed dangerous by a court or pay a penalty of one hundred dollars (\$100) to the municipality for non-registration within two weeks.

g. (1). The owner shall be required to obtain a surety bond of at least one hundred thousand dollars (\$100,000) and shall provide proof to the court and animal control office

2. The surety bond required shall provide coverage for animal bites, injuries, or death caused by the dog.

3. The owner shall provide proof of the surety bond each time the annual dangerous animal registration fee is paid.

h. The owner of the dangerous animal shall provide proof to the court that he or she has constructed a proper enclosure of a dangerous dog.

(i.) The owner shall notify the proper law enforcement agency immediately of becoming aware that a potentially dangerous or dangerous/vicious animal is loose or missing or if such animal has wounded a human being or other animal.

(j) The pleading and practice in all cases to petition the court to declare an animal to be dangerous under this section shall be in accordance with the Alabama Rules of Civil Procedure and rules of the courts governing municipal courts in this state unless otherwise specified by this act. Any judicial determination in municipal court that an animal is dangerous may be appealed to the circuit court pursuant to the requirements of the Alabama Rules of Civil Procedure and the order of the circuit court shall be final.

(k) It shall be presumed that an animal is not a dangerous animal pursuant to this act if the animal was on property owned by the owner of the animal when the event subject to a claim under this act occurred or if the victim was trespassing on any property when the event subject to a claim under this act occurred.

Section 2(a) If an animal that has previously been declared by a court to be dangerous, when unjustified, attacks and causes serious physical injury or death to a person, the owner of the animal shall be guilty of a Class B felony.

(b) If an animal that has not been declared by a court to be dangerous, when unjustified, attacks and causes serious physical injury or death to a person, and the owner of the animal had prior knowledge of the dangerous propensities of the dog, yet demonstrated a reckless disregard of the propensities under the circumstances, the owner of the animal shall be guilty of a Class C felony.

(c) If an animal that has previously been declared by a court to be dangerous, when unjustified, attacks and causes physical injury to a person, the owner of the animal shall be guilty of a Class A misdemeanor.

(d) If an animal that has not been declared by a court to be dangerous, when unjustified, attacks and causes physical injury to a person, and the owner of the animal had prior knowledge of the dangerous propensities of the dog, yet demonstrated a reckless disregard of the propensities under the circumstances, the owner of the animal shall be guilty of a Class B misdemeanor.

(e) In addition to any fines imposed by the court, a person guilty of violating subsection (a), (b), (c), or (d) shall pay all expenses, including, but not limited to, shelter, food, veterinary expenses for boarding, and veterinary expenses necessitated by impoundment of the animal medical expenses incurred by a victim from an attack by a dangerous dog, and other expenses required for the destruction of the dog.

(f)(1) When an animal declared to be dangerous is outside and not contained in the proper enclosure of a dangerous dog, the owner of the dangerous animal shall be present and shall restrain the dangerous animal with a secure

collar and leash.

(2) An owner of an animal declared to be dangerous who violates subdivision (1) shall be guilty of a Class C misdemeanor, except that a second or subsequent adjudication or conviction is a Class B misdemeanor.

(g) An owner of an animal that is the subject of a dangerous animal investigation who refuses to surrender the animal to an animal control officer or law enforcement officer, upon the request of the animal control officer or law enforcement officer, shall be guilty of a Class C misdemeanor.

(h) Any person who knowingly makes a false report to an animal control officer or law enforcement officer that an animal is dangerous is guilty of a Class C misdemeanor.

7. Chapter 8, Article V, Dangerous and Viscous Animals, Section Sec. 8-199. - *Impoundment upon determination; release of animal during proceeding*, is hereby deleted in its entirety.
8. Chapter 8, Article V, Dangerous and Viscous Animals, Sections Sec. 8-203-208, are hereby deleted in their entirety.
9. Chapter 8, Article V, Dangerous and Viscous Animals Sections, Sec. 8-211, *Additional penalties*, is hereby amended to read as follows:

In addition to all other penalties provided for violations of this chapter, any person found guilty of violating this chapter may be ordered to pay restitution to the person who has been harmed or whose property has been harmed by the potentially dangerous or dangerous/vicious animal.

Section III. Governing Law.

Any conflicting or ambiguous section or definition, between this chapter, Chapter 8, and Act No. 2018-182 (Emily's Law), shall be governed and determined under the laws of the State of Alabama.

Section IV. Severability Clause.

Each and every provision of this Ordinance is hereby declared to be an independent provision and the holding of any provision hereof to be void or invalid for any reason shall not affect any other provision hereof, and it is hereby declared that the other provisions of this Ordinance would have been enacted regardless of any provisions which might have been invalid.

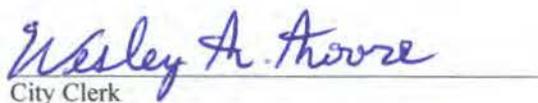
Section V. Effective Date.

This Ordinance shall be effective following its passage, approval, and publication as required by law.

ADOPTED BY THE CITY COUNCIL this the 25th day of October 2021.


President of the City Council

ATTEST:


City Clerk

APPROVED BY THE MAYOR this 25th day of October 2021.


Mayor