

# RECORD OF ORDINANCES

CITY OF UPPER ARLINGTON  
STATE OF OHIO

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## ORDINANCE NO. 6-2017

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### TO AMEND C.O. CHAPTER 519, ANIMALS, BY AMENDING SECTION 519.01, DEFINITIONS; SECTION 519.02, ANIMALS AT-LARGE; AND SECTION 519.03, IMPOUNDMENT, RELATIVE TO THE GENERAL OFFENSES CODE

- WHEREAS,** the Constitution of the State of Ohio, in Article XVIII, Section 3, grants municipalities the authority to exercise all powers of local self-government and to enforce local police, sanitary, and other similar regulations as are not in conflict with general laws; and
- WHEREAS,** pursuant to this constitutional home-rule authority, the people of the City of Upper Arlington have adopted a Charter and Codified Ordinances to exercise the powers of local self-government and enforce local police-power regulations; and
- WHEREAS,** a local police-power regulation only conflicts with a general law if it prescribes a rule of conduct that permits that which the state law expressly forbids, or vice versa; and
- WHEREAS,** a local police-power regulation does not conflict with general laws if it merely imposes a greater penalty for conduct that is prohibited by the general law, or regulates activity that is not expressly permitted by general law; and
- WHEREAS,** the City of Upper Arlington values the safety of all of its residents and their pets; and
- WHEREAS,** over the last several months, the City has experienced numerous dog-bite incidents resulting in physical harm to other domestic animals and people; and
- WHEREAS,** these incidents are currently addressed under the animal at large ordinance, which is a minor misdemeanor on a first offense that does not provide a mechanism for the court to order restitution to victims or a period of supervision for the biting-dog's owner; and
- WHEREAS,** the state's dog designation statutes provide an inadequate means to address the problems of dog bites or physical harm caused by other domestic animals;

**NOW, THEREFORE BE IT ORDAINED** by the Council of the City of Upper Arlington, Ohio:

**SECTION 1.** That C.O. § 519.01, Definitions, is hereby amended to read as follows:

§ 519.01 DEFINITIONS.

The following words and phrases, as used in C.O. Title 5, ch. 519 of the Upper Arlington City Code, shall have the meanings respectively ascribed to them in the sections:

*Board of health:* means the Board of Health of the Upper Arlington City Health District. District board of health and board of health shall have the same meaning. In the event the city contracts with another city or general health district for public health services, the Upper Arlington Board of Health shall act in an advisory capacity to the contracted entity.

*Court:* means the Franklin County Municipal Court, Environmental Division.

*Dangerous animal:* means any animal, not including nuisance, dangerous or vicious dogs as defined in this section, which in the opinion of the health commissioner represents a danger to the health, welfare and safety of the public and presents a risk of serious physical harm to persons or property as measured by infectious disease status, viciousness or poisonous status, or presents a risk of serious physical harm to persons, animals or to property.

*Dangerous dog:* means:

- (A) A dog that has caused physical harm to any person or domestic animal or, been the subject of three (3) or more violations of ORC § 955.22(C) and/or C.O. § 519.02.
- (B) Dangerous dog does not include a police dog that has caused physical harm to any person or domestic animal while the police dog is being used to assist one (1) or more law enforcement officers in the performance of their official duties.

*Domestic animal:* means animals that through long association with humans have been bred to a degree resulting in genetic changes affecting the temperament, color, conformation, or other attributes of the species to an extent that makes them different from nondomestic animals of their kind.

*Dwelling:* means the lot or parcel of land on which the house or building containing the suite is located, and also all out-buildings located on the lot or parcel.

*Health commissioner:* means the Health Commissioner of the City of Upper Arlington, or their authorized representative or designee. In the event the City of Upper Arlington contracts with a Board of Health for health services pursuant to ORC ch. 3709,

the health commissioner of the contracted board of health shall serve as the health commissioner.

*Menacing fashion:* means that a dog would cause any person being chased or approached to reasonably believe that the dog will cause physical injury to that person.

*Nuisance dog:* means:

- (A) A dog that without provocation and while off the premises of its owner, keeper, or harbinger has chased or approached in either a menacing fashion or an apparent attitude of attack, or has attempted to bite or otherwise endanger any person.
- (B) Nuisance dog does not include a police dog that has chased or approached in either a menacing fashion or an apparent attitude of attack, or has attempted to bite or otherwise endanger any person while the police dog is being used to assist one (1) or more law enforcement officers in the performance of their official duties.

*Owner:* means any person owning, keeping, possessing, harboring, maintaining or having the care, custody or control of an animal or dog.

*Physical harm (as to a dog or domestic animal):* means any injury, illness or other physiological impairment, regardless of its gravity or duration.

*Physical harm (as to a person):* means any injury, illness, or other physiological impairment, regardless of its gravity or duration.

*Provoke:* means to tease, torment, or abuse an animal, including a domestic dog or cat.

*Serious physical harm (as to a dog or domestic animal):* means any of the following:

- (A) Any illness or condition of such gravity as would normally require hospitalization or prolonged treatment.
- (B) Any physical harm, which carries a substantial risk of death.
- (C) Any physical harm which involves some permanent incapacity, whether partial or total or which involves some temporary, substantial incapacity.
- (D) Any physical harm which involves some permanent disfigurement or which involves some temporary, serious disfigurement.

*Serious physical harm (as to a person):* means any of the following:

- (A) Any mental illness or condition of such gravity as would normally require hospitalization or prolonged psychiatric treatment;
- (B) Any physical harm that carries a substantial risk of death;

- (C) Any physical harm that involves some permanent incapacity, whether partial or total, or that involves some temporary, substantial incapacity;
- (D) Any physical harm that involves some permanent disfigurement or that involves some temporary, serious disfigurement;
- (E) Any physical harm that involves acute pain of such duration as to result in substantial suffering or that involves any degree of prolonged or intractable pain.

*Vicious dog:* means any dog, which represents a danger to any person(s) or to any other domestic animal for any of the following reasons:

- (A) Any dog that kills or causes serious physical harm to any person or domestic animal.
- (B) Any dog that inflicts puncture wounds or lacerations from multiple bites during the course of an attack against any person.
- (C) Any dog that causes physical harm to any person or domestic animal while off the premises of the owner on more than one (1) occasion.
- (D) Any dog that belongs to a breed that is commonly known as a Pit Bull or a Pit Bull mixed breed dog. The ownership, keeping, or harboring of such a breed of dog shall be prima-facie evidence of the ownership, keeping, or harboring of a vicious dog.
- (E) Vicious dog does not include a police dog that has inflicted any harm specified in this division while such police dog is being used to assist one (1) or more law enforcement officers in the performance of their official duties.

**SECTION 2.** That C.O. § 519.02, Animals at Large, is hereby amended to read as follows:

§ 519.02 - ANIMALS AT LARGE AND ANIMALS CAUSING PHYSICAL HARM

- (A) No person who is the owner, keeper or harbinger of any animal shall permit it to run at large upon any public property, or private property open to use by the public in this city, including without limitations, sidewalks, streets, shopping centers and or upon the premises of another without their consent.
- (B) No person who is the owner, keeper or harbinger of any animal shall permit it to cause physical harm or serious physical harm to any other domestic animal, or to any person: while upon any public property; while upon the premises of another without their consent; or upon private property open to use by the public in this city, including, without limitations, sidewalks, streets, shopping centers, or parks.
- (C) Except as found in subsection (GD), no person who is the owner, keeper or harbinger of any dog that is not a dangerous or vicious dog shall permit it to go upon any public property, or private property open to use by the public in this city, including without limitation, sidewalks, streets, and shopping centers, or upon the

premises of another without their consent, unless the dog is on a leash, cord or tether of not more than thirty (30) feet in length.

(~~G~~D) No person who is the owner, keeper or harbinger of any dog that is not a dangerous dog or vicious dog shall permit it to go upon any public park between the hours of 8:00 a.m. to 8:00 p.m. during Daylight Savings hours, and the time period shall be between the hours of 8:00 a.m. to 5:00 p.m. during Eastern Standard hours, unless the dog is on a leash, cord or tether of not more than thirty (30) feet in length. During the period outside the stated hours in this section, the dog must still be under control by the owner, keeper or harbinger of the animal even though the dog is not leashed.

(~~D~~E) It shall be an affirmative defense to a violation of subsections (A), (~~B~~), ~~or (C)~~, or (D) that involves an animal that is not a dangerous dog or vicious dog that the animal was:

- (1) Securely confined in an automobile or cage, which was adequately ventilated;
- (2) Being exhibited at a public show, parade or public institution;
- (3) Engaged in any activity expressly approved by the laws of this state.

(~~F~~) It shall be an affirmative defense to a violation of subsection (B) that the animal, immediately prior to the incident, was provoked by the domestic animal that was harmed; by the owner, keeper, or harbinger of the domestic animal that was harmed; or by the person to whom the animal caused physical harm or serious physical harm.

(~~E~~G) Strict liability is intended to be imposed for a violation of this section.

(~~F~~H)(1) Whoever violates subsections (A), (C), or (D) of this section that involves an animal that is not a nuisance dog, dangerous dog, or vicious dog is guilty of animals at large, a minor misdemeanor. If the offender within five (5) years of the offense, previously has been convicted of, pleaded guilty to, or forfeited bond to subsections (A), (C), or (D) of this section or a substantially equivalent offense, the offender shall be guilty of a misdemeanor of the fourth degree.

(2) Whoever violates subsections (A), (C), or (D) of this section that involves a nuisance dog is guilty of nuisance dog at large, a misdemeanor of the fourth degree. If the offender within five (5) years of the offense previously has been convicted of, pleaded guilty to, or forfeited bond to subsections (A), (C), or (D) of this section or a substantially equivalent offense, the offender shall be guilty of a misdemeanor of the third degree. In addition, the court may order the offender to personally supervise the dog, to cause the dog to complete dog obedience training, or to do both, and the court may order the offender to obtain the liability insurance

pursuant to ORC § 955.22(E)(1) in an amount, exclusive of interest and costs, that equals or exceeds one hundred thousand dollars (\$100,000.00).

(3) (a) Whoever violates subsection (B) of this section is guilty of animal causing physical harm, a misdemeanor of the fourth degree. If the offender within five (5) years of the offense previously has been convicted of, pleaded guilty to, or forfeited bond to a violation of this section or a substantially equivalent offense, the offender shall be guilty of a misdemeanor of the third degree.

(b) Whoever violates subsection (B) of this section, where the violation resulted in physical harm to a person, is guilty of a misdemeanor of the fourth degree. If the offender within five (5) years of the offense previously has been convicted of, pleaded guilty to, or forfeited bond to a violation of this section or a substantially equivalent offense, the offender shall be guilty of a misdemeanor of the third degree.

(c) Whoever violates subsection (B) of this section, where the violation resulted in serious physical harm to a person, is guilty of a misdemeanor of the second degree. If the offender within five (5) years of the offense previously has been convicted of, pleaded guilty to, or forfeited bond to a violation of this section or a substantially equivalent offense, the offender shall be guilty of a misdemeanor of the first degree.

(d) For any violation of subsection (B) of this section, in addition to other penalties permitted by law, the court may order any or all of the following: that the dog or other animal be confined as provided for C.O. §519.10(A); that the dog or other animal complete obedience training; that the offender obtain the liability insurance pursuant to ORC §955.22(E)(1) in an amount, exclusive of interest and costs, that equals or exceeds one hundred thousand dollars (\$100,000.00).

(e) In addition to the penalties provided in subsection (H)(3)(d), for any violation of subsection (B) of this section under the circumstances described in subsection (H)(3)(b), where such violation is a first offense in five (5) years, the court may order that the dog or other animal be forfeited to the Franklin County Humane Society, or other animal welfare organization as determined by the court. For any violation of subsection (B) of this section under the circumstances described in subsection (H)(3)(b), where the violation is not a first offense in five (5) years, and for any violation of subsection (B) of this section under the circumstances described in subsection (H)(3)(c), the court may order that the dog or other animal be humanely destroyed.

**SECTION 3.**

That C.O. § 519.03, Impoundment, is hereby amended to read as follows:

§ 519.03 - IMPOUNDMENT.

- (A) An animal found running at large or that has caused physical harm or serious physical harm to another domestic animal or a person may be impounded by any law enforcement officer, animal control officer, or other person designated by the Upper Arlington City Manager so finding the animal. The city or its agent shall provide notice of such impoundment if the owner is known and can be reasonably notified. No animal impounded shall be released from the impoundment facilities except upon payment by the owner, keeper or harbinger of the animal for all storage, service and transportation charges. Such payment does not relieve the owner, keeper or harbinger from any penalties, which may be imposed for violations of any ordinance or statute.
- (B) The health commissioner, any law enforcement officer, animal control officer, or other person authorized to enforce this chapter may impound a dog that has been declared to be a dangerous dog or vicious dog pursuant to C.O. § 519.09(A). The dog may remain impounded pending a determination hearing pursuant to ORC § 955.222. The dog shall not be released from the impoundment facilities until authorized by the health commissioner or ordered by the court.
- (C) No animal impounded pursuant to subsections (A) or (B) shall be released from the impoundment facilities except upon payment by the owner, keeper or harbinger of the animal for all storage, service and transportation charges. Such payment does not relieve the owner, keeper or harbinger from any penalties, which may be imposed for violations of any ordinance or statute.

**SECTION 4.**

If any provision of this Ordinance is held to be unlawful, invalid or unenforceable under any present or future laws or regulations, such provision shall be fully severable; and this Ordinance shall then be construed and enforced as if such unlawful, invalid or unenforceable provision had not been a part of it. The remaining provisions of this Ordinance shall remain in full force and effect and shall not be affected by such unlawful, invalid, or unenforceable provision or by its severance.

**SECTION 5.**

That this ordinance shall take effect on the earliest date allowed by law.

**PASSED: February 13, 2017**

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**President of Council**

**ATTEST:** \_\_\_\_\_  
**City Clerk**

I, Ashley Ellrod, City Clerk of Upper Arlington, Ohio, do hereby certify that the above is a true and correct copy.

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

**CERTIFICATE OF POSTING**

I, Ashley Ellrod, City Clerk of the City of Upper Arlington, Ohio, do hereby certify that publication of the foregoing was made by posting a true copy of Ordinance No. 6-2017 at the most public place in said corporation as determined by the Council, the Municipal Building, 3600 Tremont Road, for a period of ten (10) days commencing February 14, 2017.

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City Clerk of the City of Upper Arlington

**Vote Slip**

**Sponsor:** Ms. Casper  
**Date Introduced:** January 23, 2017

**Legal Ad:**  
**Newspaper:**

**Reading Date(s):** January 23, 2017: February 13, 2017

**Voting Aye:** Unanimous  
**Voting Nay:**  
**Abstain:**  
**Absent:**

**Date of Passage:** February 13, 2017

**City Council Conference Session/Other Review:** January 17, 2017

**Other:** Thirty Day Clause