

AN ANIMAL CONTROL ORDINANCE SUPPLEMENTING EXISTING ANIMAL CONTROL ORDINANCES, OF THE MUNICIPAL CODE OF THE TOWN OF WESTPORT, INDIANA

WHEREAS, the Town Council of the Town of Westport, Indiana, finds that the existing ordinances of the Westport Municipal Code should be supplemented hereto, and

WHEREAS, the joint Greensburg-Decatur County Animal Control Board as defined herein has recommended to the Westport Town Council the listed changes, corrections and amendments set forth herein.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF WESTPORT, INDIANA, that:

Ordinances 1989-3, 1989-4 and 2003-2 under the Town of Westport Code of Municipal Ordinances, are hereby supplemented with the following Sections under this Ordinance.

§ 1.0 DUTIES, JURISDICTION, AND POWERS.

The Animal Control Manager and staff shall be sworn to uphold, carry out and supervise the enforcement of this chapter within the town of Westport, unless otherwise provided. The Animal Control Manager and staff shall be vested with all the powers ordinary and necessary under the law to enforce the provisions of this chapter. These duties and powers shall specifically include, but not be limited to the following:

- A. The power to apprehend and impound any animal that appears to be stray or at large.
- B. The power to apprehend and impound any animal that is on the owner's property without being under the owner's personal physical restraint or posing an immediate physical danger to the community. Such impoundments must be preceded by written certification by a citizen witness, or by an officer of Animal Control or by the police department. However, no animal shall be apprehended and impounded if the owner is available and is restraining the animal unless it has been determined to have been off the property as documented by the affidavit of a witness.
- C. The power to apprehend and impound any animal when the Animal Control Manager or staff have probable cause to believe that the animal has been treated cruelly, inhumanely, neglected or used by the owner/agent in a fighting contest.
- D. The power to issue official warning or a notice of ordinance violation for violations of this chapter.
- E. The power to enter private real property in pursuit of an animal to enforce this chapter. In performing their duties, the Animal Control Manager and staff shall be specifically prohibited from the following: entering an inhabited or locked dwelling unit without the dwelling unit owner's permission or without a warrant authorizing the entry except when apprehending and impounding an animal pursuant to subsection C.

§ 2.0 ANIMAL CONTROL.

A. Definitions.

As used in this § 2.0 of the Town of Westport Municipal Code, the following terms mean:

Animal--For the purpose of this ordinance, animal shall mean dog, cat, rabbit, or any domesticated animal found within the town limits.

Animal Control Authority-- The agency or department of the Greensburg-Decatur County Animal Control Board as created by ORDINANCE NO. 2008-23 of the MUNICIPAL CODE OF THE CITY OF GREENSBURG, INDIANA Section 90.20, et seq., or any designated representative for the Town of Westport (Westport Police Department) or the Animal Control Board thereof, including the Animal Control Manager and Animal Control Officer or police enforcement officer.

Animal Establishment--Any pet shop, grooming shop, animal auction, performing-animal exhibition, kennel or animal shelter, except this term shall not include veterinary medical facilities, licensed research facilities, facilities operated by government agencies, or licensed animal dealers regulated by the USDA under the provisions of US Public Laws 89-544, 91-579, 94-279, 99-198, and 101-624.

Animal Shelter--Facility designated or recognized by the Greensburg-Decatur County Animal Control Board or the town of Westport pursuant to any town ordinance in existence or adopted in the future, for the purpose of impounding and caring for animals.

At Large--A dog or cat shall be deemed to be at large when off the property of the owner and not under restraint.

Continuous Manner--Uninterrupted in a fixed location

Habitual Offender--Any person(s) with 3 or more written violations in a 365 day period.

Humane Manner--Care of an animal to include, but not be limited to, adequate heat, ventilation and sanitary shelter, wholesome food and water, consistent with the normal requirements and feeding habits of the animal's size, species, and breed.

Kennel--An establishment kept for the purpose of breeding, selling, or boarding dogs or cats or engaged in training dogs or cats. This term shall also include establishments kept for the foregoing purposes by official and non-official rescue groups.

Licensing Authority--The agency or department of the Greensburg-Decatur County Animal Control Board, or the Town of Westport or any designated representative thereof, unless otherwise limited pursuant to this ordinance, charged with administering the issuance and/or revocation of permits and licenses under the provisions of this ordinance.

Livestock Guarding Dogs--Dogs kept for the primary purpose of protecting livestock from predatory attacks.

Neutered--Rendered permanently incapable of reproduction.

Nuisance--A dog or cat shall be considered a nuisance if it: damages, soils, defiles, or defecates on private property other than the owner's or on public walks and recreation areas unless such waste is immediately removed and properly disposed of by the owner, causes unsanitary, "dangerous," or offensive conditions, chases vehicles, or molests, attacks, or interferes with persons or other domestic animals on public property.

Owner--A person having the right of property or custody of a domestic animal or who keeps or harbors a domestic animal or knowingly permits a domestic animal to remain on or about any premises occupied by that person.

Person--Any individual, corporation, partnership, organization, or institution commonly

recognized by law as a unit.

Pet Shop--An establishment engaged in the business of buying or selling, at retail, dogs or cats or other animals for profit-making purposes.

Restraint--A dog or cat shall be considered under restraint, if it is within the real property limits of its owner or secured by a leash or lead or under the control of a responsible person.

Wild Animals (Class 1)--Any of the following: fish, nonpoisonous snake, nonpoisonous reptile, nonpoisonous amphibian, sugar glider, hedgehog, and/or birds not normally kept as cage birds.

Wild Animals (Class 2)--Any animal or hybrid of any animal that is not a domestic animal or wild animal (Class 1), as defined in this chapter, or any mammal the United States government or the state of Indiana may list or publish as endangered species, or poisonous snake, poisonous reptile or poisonous amphibian.

B. Rabies Vaccination.

1. Except as provided in § 2.0 (C), no person shall own, keep, or harbor any dog or cat over four (4) months of age within the town of Westport unless such dog or cat is vaccinated. The provisions of this section do not apply to animals owned by a licensed research facility or held in a veterinary medical facility or government operated or licensed animal shelter.
2. All dogs and cats shall be vaccinated against rabies by a licensed veterinarian, in accordance with the latest "Compendium of Animal Rabies Prevention and Control" authored by the National Association of State Public Health Veterinarians and published annually in the *Journal of the American Veterinary Medical Association*.
3. A certificate of vaccination shall be issued to the owner of each animal vaccinated on a form recommended by the Compendium. Each owner shall also receive a durable vaccination tag indicating the year in which it was issued. The rabies tag must be attached to the collar of the dog and worn at all times. Tags are not transferable.

C. Owner responsibility.

1. All dogs and cats should have general animal care.
2. Every female animal in heat or rutting shall be restrained within a building or secure enclosure so that the animal cannot come into contact with a male animal of the same species except for planned breeding. Any unaltered male animal shall not be allowed to roam at large.
3. Every owner of an animal within the town shall see that their animal:
 - a. Is kept in a clean, sanitary and healthy manner and is not confined so as to be forced to stand, sit or lie in its own excrement.
 - b. **Is not chained or tethered or otherwise fenced-in or in a cage outside in a continuous manner between the hours of 10 pm and 6 am.**
 - c. Is not restrained by the neck with the use of a rope, wire, chain or other metal collar.
 - d. If chained or tied outside, shall have available at all times for that animal, a chain, leash or lead, not less than ten feet or two and one-half lengths of the animal, whichever is the greater. However, this chain, leash or lead cannot allow the animal to enter onto or into another persons' property or onto or into the public right-of-way.
 - e. Has sufficient and wholesome food and water, proper for that species of animal.
 - f. Has a proper and adequate structure provided that will protect that animal from all elements of the weather and will allow that animal to stand, sit and lie down

- without restriction.
- g. If ill, diseased or injured, receive care as necessary to prevent the transmittal of the disease to other animals or prolong the suffering of the injured animal.
 - h. Is not beaten, cruelly treated, overloaded, overworked or otherwise abused, or cause, instigate or permit any dog fight, cockfight, bullfight or other combat between animals or between animals and humans.
 - i. Is not physically altered in any manner by anyone other than a veterinarian with the exception of tattooing and grooming.
 - j. This section shall also apply to animals kept at the Greensburg-Decatur County Animal Control Shelter or by anyone acting in behalf of the Greensburg-Decatur County Animal Control Board.
- 4. All dogs and cats shall be kept under restraint and shall not be allowed to run-at-large.
 - 5. No domestic animal shall be allowed to cause a nuisance. The owner of every domestic animal shall be held responsible for every behavior of such domestic animal under the provisions of this ordinance.
 - 6. Failure to comply with the provisions of this section shall be subject to a fine of \$100.00.
 - 7. Dog and cat owners shall ensure that their dog or cat carries identification at all times in the form of microchip, tag, or other means to allow easy determination of the owners.
 - 8. Livestock guarding dogs shall be exempt from nuisance regulations when performing duties protecting livestock on premises owned or controlled by the owner.

D. Impoundments.

- 1. Any dog, cat or other domesticated animal found running at large shall be impounded by the Animal Control Authority in an animal shelter and confined in a humane manner. Immediately upon impounding a dog or cat, the Animal Control Authority shall make every reasonable effort to notify the owner and inform such owner of the conditions whereby custody of the animal may be regained. Dogs and cats not claimed by their owners within a period of three (3) business days in which the shelter is open to the public shall become the property of the Greensburg-Decatur County Animal Control Board.
- 2. When a dog or cat is found running at large and its ownership is verified by the Animal Control Authority, the Animal Control Authority may exercise the option of serving the owner with a notice of violation in lieu of impounding the animal.
- 3. In the event that the Animal Control Authority finds dogs or cats to be in violation of § 2.0(D), it shall have the right forthwith to remove or cause to have removed any such animals to a safe place for care at the owner's expense or to euthanize them when necessary to prevent further suffering. Return to the owner may be withheld until the owner shall have made full payment for all expenses so incurred.
- 4. Disposal of an animal by any method specified herein does not relieve the owner of liability for violations and any accrued charges.

E. Redemption.

- 1. Any animal impounded may be redeemed by the owner thereof within three (3) business days upon payment of a boarding fee of \$10.00 per day and/or any expenses related to pick-up and/or care of the animal prior to release. Payment of impoundments

fees is not considered to be in lieu of any fine, penalty, or fees.

2. Any animal confined for rabies quarantine, evidence, or other purpose may be redeemed by the owner thereof upon payment of a boarding fee of \$10.00 per day and/or any expenses related to pick-up and/or care of the animal prior to release.

3. No animal required to be vaccinated under this ordinance may be redeemed until provisions for such vaccination have been fulfilled.

F. Adoption.

An adoption fee shall be assessed at the time of adoption. No dog or cat shall be released for adoption as a pet without being neutered or without a written agreement from the adopter guaranteeing that the animal will be neutered. Vaccination fees and veterinary costs may be assessed above and beyond the adoption fee.

G. Interference.

No person shall interfere with, hinder, or molest any agent of the Greensburg-Decatur County Animal Control Board or any designated representative thereof including the Animal Control Officer or police enforcement officer in the performance of any duty as herein provided. Any person violating this section shall be subject to a fine of not less than \$250.00 nor more than \$2,500.00.

H. Keeping Wild Animals.

1. Any person who keeps, owns, harbors, boards, sells or lets for hire any wild animal (Class 1) must obtain the appropriate permit(s) from the state of Indiana and report to the Animal Control Authority the acquisition of such a wild animal (Class 1) and the acquisition or application for a permit required by the state of Indiana.

2. Both wild animals (Class 1) and wild animals (Class 2) must be kept in conditions that do not violate any United States, Indiana, or town of Westport law or ordinance provisions.

3. Any person who keeps, harbors, owns, sells, boards or lets for hire any wild animal (Class 1) and/or wild animals (Class 2) is subject to inspections by the state of Indiana or the Animal Control Authority at any time.

4. (a) All wild animals (Class 2), are forbidden to be kept, owned, harbored, boarded, sold or let for hire within the city, except as provided by subsection B of this section.

(b) The Westport Town Council may grant a temporary variance to §02(H)(4) to those, owners, commercial animal establishments or sponsors who make formal written requests for a exhibition of wild animals (Class 2) to be held within the town limits.

A written formal request must be presented to the Animal Control Authority and the Westport Town Council not less than fourteen days prior to the starting date of the exhibition. The request must include but is not limited to: the legal name, address, telephone number; the type and number of wild animals (Class 2) in the exhibit; the time, date(s) and location of the exhibit. Upon receipt of the request for the variance, the Animal Control Authority will make initial investigation as to the information contained on the request and verify any permit(s) or license(s) required. The Animal Control Manager will then present the variance request with any recommendation to the Westport Town Council for at its next regularly scheduled meeting for its decision and action upon the request. The applicant is entitled to be notified of said meeting and to be present to present evidence on its behalf. Upon the decision of the board, the Animal Control Manager or a member of the Town Council, or its designate, will notify the

applicant and/or sponsor of the board's decision. The board of public works and safety and/or the town attorney's office reserves the right to attach any additional requirements to the exhibit deemed reasonable and to void any variance found in violation of this chapter or harmful to the public.

(c) The Westport town council may issue a general variance for up to one year for this section to those individuals or firms that have shown they have received prior approval by the Board of Public Works and Safety for a similar variance and that an approved program was conducted without incident; the type of animal requests do not vary significantly from the original request; and have complied with and adhered to any and all applicable laws and regulations and requests of the Animal Control Authority.

(d) The town of Westport and its agents may not be held liable for any damages caused by such exhibit permitted hereunder.

5. (a) Any person who violates any or all of Sections (H)(i), (H)(ii) and/or (H)(iii), or otherwise violates any provisions of this Section (H), is subject to a fine of fifty dollars (\$50.00) for the first offense, with fines increasing in increments of fifty dollars (\$50.00) for each subsequent offense within one year of the first offense, but not more than one thousand dollars (\$1,000.00), and is subject to having said wild animal(s) confiscated by the state of Indiana and/or the Animal Control Authority.

(b) Any person who is found in violation of Section (H)(iv), may be subject to a fine of one hundred dollars (\$100.00) for the first offense with fines increasing in increments of one hundred dollars (\$100.00) for each subsequent offense within one year of the first offense, but not more than one thousand dollars (\$1,000.00). This fine may be assessed against the sponsor of such an exhibit, should the owner or commercial animal establishment not reside within the state of Indiana.

I. Fines, Fees, and Penalties.

1. All impoundments fines, fees, and penalties collected in violation of this ordinance by Decatur County Animal Control shall be deposited in the Decatur County General Fund or collected by the town of Westport will be deposited into the Town of Westport General Fund.
2. Payment of municipal ordinance violation notices shall be made at the office of the municipal clerk-treasurer within Ten (10) days from date of issuance.
3. For purposes of determining fines, fees, and penalties for any subsequent violations, violations prior to the enactment of new or revised ordinances shall apply.
4. The Animal Control Board may declare a person a habitual offender and that person or owner is subject to (a)having the animals(s) immediately confiscated by the Animal Control Officer, and/or (b) a notice violation of two hundred fifty dollars (\$250.00) for each violation, and/or (c) declaration by the Animal Control Board that the person or owner shall not own, keep or harbor any animal within the municipal city limits.

J. Right to Appeal

Any Person(s) may appeal any such fine, fee, penalty, and/or findings or orders issued by the Animal Control Board, the Animal Control Officer, and/or the Animal Control Department by giving written notice of appeal, via certified mail, to the Animal Control Board within 72 hours of the violation.

Notice of Appeal may be sent to the Animal Control Board at the following address:

Greensburg/Decatur County
Department of Animal Control
Attn: Animal Control Board
1635 West Park Road
Greensburg, Indiana 47240

§ 3.0 IDENTIFICATION AND REGULATION OF DANGEROUS DOGS.

A. Use of Force to Stop Attack.

1. If any dog shall attack a person or domestic animal who was peaceably conducting himself in any place where he may lawfully be, any person, for the purpose of preventing injury or further injury, may use such force as is required to stop the attack.
2. A police officer, the Animal Control Manager, or the Animal Control Officer acting pursuant to his statutory duties may, where the threat of serious injury to a person or domestic animal is imminent and unjustified, use such force as is required to prevent such injury.

B. Definitions.

As used in this §3.0 of this municipal code, the following terms mean:

Animal Control Board--The Greensburg-Decatur County Animal Control Board.

Dangerous Dog--Any dog which without justification attacks a person or domestic animal causing physical injury or death, or behaves in a manner that a reasonable person would believe poses an unjustified imminent threat of serious injury or death to one or more persons or domestic animals. A dog's breed shall not be considered in determining whether it is "dangerous". Further, no dog may be declared "dangerous":

- i. If the dog was protecting or defending a person within the immediate vicinity of the dog from an attack or assault;
- ii. If at the time the person was committing a crime or offense upon the property of the owner, or custodian, or the dog;
- iii. If the person was teasing, tormenting, abusing or assaulting the dog, or in the past had teased, tormented, abused or assaulted the dog;
- iv. If the dog was attacked or menaced by the domestic animal, or the domestic animal was on the property of the owner, or custodian, of the dog;
- v. If the dog was responding to pain or injury, or protecting itself, its kennels or its offspring;
- vi. If the person or domestic animal was disturbing the dog's natural functions such as sleeping or eating.
- vii. Neither growling nor barking, nor both, shall alone constitute

grounds upon which to find a dog to be "dangerous" when it is on its own property or properly restrained by its owner.

Attack-- Aggressive physical contact initiated by the dog.

Serious Injury--Any physical injury consisting of broken bones or a permanently disfiguring laceration requiring either multiple stitches or cosmetic surgery.

Domestic Animal--Any animal commonly kept as a pet in family households in the United States, including, but not limited to dogs, cats, guinea pigs, rabbits and hamsters, and any animal commonly kept for companion or commercial purposes.

C. Determination of Dangerous Dog.

1. Any person may make a complaint of an alleged Dangerous Dog, as that term is defined herein, to a police officer, the Animal Control Manager, the Animal Control Officer, or other employee or representative of the Animal Control Board. The Animal Control Officer shall cause an investigation to be made of any complaint of a Dangerous Dog. Following the investigation, the Animal Control Officer shall make a determination as to whether or not a dog is a Dangerous Dog as that term is defined herein.

2. Any person or persons owning a Dangerous Dog and subject to the orders of the Animal Control Officer may appeal any such findings or orders by giving written notice of appeal to the Animal Control Officer within seven (7) days of any such finding or order or within seven (7) days in the event of notice that a Dangerous Dog will be euthanized. The Animal Control Officer shall forward the notice of appeal to the Animal Control Board. The Animal Control Officer shall cease any action that is irreversible with regard to any animal pending appeal.

D. Regulation of Dogs Determined to be "Dangerous Dogs".

Where a dog is determined to be a Dangerous Dog, the Animal Control Officer shall require the owner of said animal to register such animal with the Animal Control Board, and to provide prompt notification to the Animal Control Board of any changes in the ownership of the animal, names, addresses and telephone numbers of new owners; any change in the health status of the animal; any further instances of attack; any claims made or lawsuits brought as a result of further instances of attack; the death of the animal. In addition, the Animal Control Officer may require any or all of the following, but items 5, 6 and 11, or any one of them, may only be imposed where there has been serious injury to a person.

1. Indoors, when not alone, the dog be under the control of a person eighteen (18) years or older. (Provisions for the dog to be outdoors must also be made.)

2. Outdoors and unattended, the dog be kept within a locked fenced area or kennel from which it cannot escape.

3. When outdoors the dog must be attended and kept within a fenced area from which it cannot escape.

4. When outdoors the dog must be attended and kept on a leash no longer than six (6) feet and under the control of a person eighteen (18) years of age or older.

5. When outdoors the dog must be attended and muzzled. Such muzzle shall not cause injury to the dog or interfere with its vision or respiration but shall prevent it from biting any person or animal.

6. Outdoors and unattended the dog must be confined to an escape-proof kennel of the following description:

a. Such kennel shall allow the dog to stand normally and without restriction, and

shall be at least two and one-half (2.5) times the length of the dog, and shall protect the dog from the elements.

b. Fencing materials shall not have openings with a diameter of more than two (2) inches, and in the case of wooden fences, the gaps shall not be more than two (2) inches.

c. Any gates within such kennel or structure shall be lockable and of such design as to prevent the entry of children or the escape of the animal, and when the dog is confined to such kennel and unattended such locks shall be kept locked.

d. The kennel may be required to have double exterior walls to prevent the insertion of fingers, hands or other objects.

7. Placement of a sign or signs of a description and in places directed by the Animal Control Board, advising the public of the presence and tendencies of said animal.

8. Attendance by the dog and its owner/custodian at training sessions conducted by a certified applied animal behaviorist, board certified veterinary behaviorist or other recognized expert in the field and completion of training or any other treatment as deemed appropriate by such expert. The owners of the dog shall be responsible for all costs associated with the evaluation and training ordered under this section.

9. Neutering or spaying of the dog at the owner's expense, unless medically contraindicated.

10. That the dog be permanently identified by tattooing or by injecting an identification microchip, using standard veterinary procedures and practices, identification number and the identification and the identification of the person performing the procedure to be registered with the Animal Control Board as indicated above.

11. The procurement of liability insurance in an amount to be determined by the Animal Control Officer, but in no case in an amount of less than fifty thousand dollars (\$50,000), covering the medical and/or veterinary costs resulting from future actions of the dog.

12. If any of the above conditions ordered by the Animal Control Officer are not complied with, the owner shall be subject to a fine of not more than two thousand five hundred dollars (\$2,500) and confiscation of the dangerous animal. If a dangerous animal has been confiscated, then the animal may be euthanized after seven (7) days' notice to an owner.

13. If a further incident of attack occurs under such circumstances that the dog is determined to be a Dangerous Dog, the Animal Control Officer may impose or reimpose any applicable directives listed above.

§ 4.0 REPEAL OF ORDINANCES. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

§ 5.0 HEADINGS. The headings or titles of the several sections in this ordinance shall be solely for convenience of reference and shall not affect the meaning, construction or effect of this ordinance.

§ 6.0 EFFECTIVE DATE. This ordinance shall be in full force and effect from and after its passage by the Common Council.

ORDINANCE NO. 2012-3

ADOPTED AND PASSED by the Town Council of the Town of Westport, Indiana, this

13th day of August, 2012.

AYES

NAYS

Bryan S. Galwood

Darlene Tobias

Boyd Holcomb

Council Members

Council Members

Presented to me to by the Town Council of Westport, Indiana, on this 10 day of

September

August, 2012, at 9:00 p.m. (local time).

Sylvia England

Clerk-Treasurer