

ORDINANCE NO. 08-11

AN ORDINANCE TO THE CITY OF SOMERSET, KENTUCKY, REPEALING IN FULL ORDINANCE NUMBER 288 AND ORDINANCE NUMBER 652, AND ANY AND ALL OTHER ORDINANCES ADDRESSING DOGS AND OTHER ANIMALS IN THE CITY LIMITS, AND ANY AND ALL AMENDMENTS ENACTED REGARDING SAID ORDINANCES; SETTING FORTH THE NEW RULES AND REGULATIONS REGARDING ANIMALS WITHIN THE CORPORATE BOUNDARIES OF THE CITY OF SOMERSET PURSUANT AND IN CONJUNCTION WITH KENTUCKY STATE LAW, SPECIFICALLY: *AGRICULTURE AND ANIMALS*, KRS CH. 246 ET SEQ.; *DOGS*, KRS. CH. 258; AND *STRAYS AND ANIMALS RUNNING AT LARGE*, KRS CH. 259;

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF SOMERSET, KENTUCKY AS FOLLOWS:

ARTICLE I. IN GENERAL

1. Hitching horses, etc.

(a) It shall be unlawful for any person to hitch horses, or other animals to any telegraph, telephone, electric light or other utility pole, water hydrant or tree, located on any street, alley or public place or the sidewalk or grass plots hereof in the limits of the city.

(b) Any person violating any provision of this section shall, upon conviction by a court of competent jurisdiction, be guilty of a violation and shall be fined not more than fifty dollars (\$50.00) for each violation.

2. Awarding of live animals as prizes prohibited.

(a) It shall be unlawful for any person to offer, give, or deliver any live animal as a prize or reward in connection with a raffle, game, promotion, or incentive of any kind.

(b) Any person who violates the terms of this section shall be guilty of a misdemeanor punishable by a fine not to exceed five hundred dollars (\$500.00) or imprisonment for a term not to exceed six (6) months or by both fine and imprisonment at the discretion of the court.

3. Removal of animal excreta required.

(a) The custodian of every animal shall remove any excreta deposited by his/her animal(s) within the city limits on public walks, streets, recreation areas or private property belonging to another.

(b) Any excreta not removed in violation of subsection (a) above is declared to be a public nuisance.

(c) Any person violating any provision of this section shall, upon conviction by a court of competent jurisdiction, be guilty of a violation and shall be fined not more than fifty dollars (\$50.00) for each violation.

4. Animal Nuisances Prohibited.

1. No person shall own, keep or harbor any animal that unreasonably annoys humans, endangers the life or health of persons or other animals, or substantially interferes with the rights of citizens, other than their owner's, to enjoyment of life or property. The term "animal nuisances" shall include, but is not limited to any animal that:

(a) Barking, Crowing, Howling, Yelping, Whining: Barks, crows, howls, yelps or whines loud enough to be heard beyond the premises of where it is kept or harbored;

(b) Trespassing: Goes upon any property or premises not owned or occupied by the person who keeps, harbors or owns the animal;

(c) Damaging Personal Property: Turns over, gets into, or otherwise damages or disturbs garbage cans, or any items or personal property located on any premises other than those owned or occupied by the person who owns, keeps or harbors the animal;

(d) Frightening, Molesting People: Runs at, jumps upon, chases, barks at, bites at or in any other way frightens, molests or scares any child or adult other than the one who owns, keeps or harbors the animal and the members of his immediate family;

(e) Attacking, Chasing Other Animals: Attacks or chases any other animal besides those animals who are kept, owned or harbored by the same person;

(f) Chasing Vehicles: Chases motor vehicles, bicycles or scooters other than those owned or operated by the same person or his immediate family who keeps, owns or harbors the animal;

(g) Running at Large in the Public Parks: Goes upon City cemeteries, parks and playgrounds, except at designated parks or under restraint;

(h) Vacant or Unoccupied Properties: Is housed in or confined on the premises of any vacant or unoccupied residence.

(i) Offensive Odors and Sanitary Conditions: Causes fouling of the air by noxious or offensive odors resulting from the accumulation of animal excrement and thereby creates unreasonable annoyance or discomfort to neighbors or others in close proximity to the premises where the animal is kept or harbored because of the failure to keep the animal's pen, yard, lot or other enclosures in a sanitary condition and free from preventable orders; and,

(j) Public Health and Safety: Is offensive or dangerous to the public health, safety or welfare by virtue of the number of animals maintained at a single residence, or the inadequacy of the facilities, or the inability to provide proper care for those animals.

2. Any person violating any provision of this section, upon conviction by a court of competent jurisdiction, shall be guilty of a violation and shall be fined not more than fifty dollars (\$50.00) for each violation.

ARTICLE II. LIVESTOCK

1. Swine prohibited within corporate limits.

Except in A-1 zoning districts, it shall be unlawful to keep swine within the corporate limits of the city at any time during any year.

2. Poultry.

It shall be the duty of persons having, owning or keeping poultry within the corporate limits of the city to keep the poultry at all times on and confined to the property or premises of the person having, owning or keeping the poultry; except for the transporting of poultry.

3. Running at large.

It shall be unlawful for any person to suffer or permit any cow, calf, horse, mare, colt, mule, sheep, goat, swine or other such stock of such person or under his control, to run at large within the city. (**State law reference--**Strays and animals running at large, KRS Ch. 259.)

4. Penalties.

Any person violating any provision of this section, upon conviction by a court of competent jurisdiction, shall be guilty of a violation and shall be fined not more than fifty dollars (\$50.00) for each violation.

ARTICLE III. DOGS

1. Definitions.

As used in this article, the following terms shall mean:

Animal control authority. An entity acting alone or in concert with other state or local law enforcement officers or employees of governmental units who enforce the animal control laws of the city, county, and state or who are responsible for providing for the shelter and welfare of animals.

Animal control officer. Any individual employed, contracted with or appointed by the animal control authority for the purpose of aiding in the enforcement of this article and includes the officials designated by the Pulaski Fiscal Court to be in charge of the county animal shelter for Pulaski County, Kentucky. As used in this article, the term also includes the agents and employees of the dog warden and other animal control officers charged with regulating animals and owners of animals in accordance with local, county, and state laws.

City. All public and private areas within the jurisdiction of the City of Somerset, Kentucky.

Dangerous dog.

(a) Any dog which constitutes a physical threat to human beings or other domestic animals by virtue of a known propensity to endanger life by an unprovoked assault or bite so as to cause substantial bodily harm; or

(b) Any dog which when provoked, in a vicious or terrorizing manner approaches any person in an attitude of attack upon the streets, sidewalks, private areas, or any public grounds or places; or

(c) Any dog with a known propensity, tendency or disposition to attack unprovoked, to cause injury to or otherwise threaten the safety of human beings or domestic animals; or

(d) Any dog which bites (to the extent of puncturing or severely bruising skin), inflicts injury, assaults or otherwise attacks a human being or domestic animal without provocation on public or private property; or

(e) Any dog owned or harbored primarily or in part for the purpose of dog fighting or any dog trained for dog fighting; or

(f) Any dog which has previously attacked or bitten a human being other than under the circumstances deemed justifiable under subsection (11) of this definition.

(g) Any dog which has behaved in such a manner that the owner thereof knows or should reasonably know that the dog is possessed of tendencies to attack or to bite human beings other than the type of circumstances which would be justifiable under subsection (11) definition.

(h) Any dog certified by a doctor of veterinary medicine, after observation thereof, as posing a danger to human life or property if not kept in the manner required by this article on the basis of reasonable medical probability.

(i) Any dog which has been trained as an attack or guard dog, except such dogs which are employed by any law enforcement department within the Commonwealth of Kentucky.

(j) Exceptions: An animal shall not be deemed dangerous solely because: (1) It bites, attacks or menaces (a) any one assaulting its owner, or (b) any person or other animal who has tormented or abused it; or (2) it is otherwise acting in defense of any attack from a person or other animal upon its owner or any other person; or (3) it is protecting or defending its young or the young of any other animal.

Enclosure. An uncovered fence or structure of at least seven (7) feet in height or a covered fence or structure of sufficient height to allow the dog to stand erect without touching the top cover, forming or causing an enclosure suitable to prevent the entry of young children, and suitable to confine a dangerous dog in conjunction with other measures which may be taken by

the owner or keeper, such as tethering of the dangerous dog. Such enclosure shall be securely enclosed and locked and designed with secure sides, top and bottom and shall be designed to prevent the dog from escaping from the enclosure. If the pen or structure has no bottom secured to the sides, then the sides must be embedded into the ground no less than one foot.

Impoundment. Taken into custody of the animal shelter for Pulaski County, Kentucky, including but not limited to the Pulaski County Humane Society Shelter.

Lead or leash. A device for restraint of a dog as defined under "restraint" in this section.

Owner. Any person, partnership, firm, corporation, or other legal entity owning, possessing, keeping, harboring or having the care or custody of a dog.

Restraint. A dog shall be deemed under restraint if on the premises of the owner and confined in a secure enclosure above defined or if accompanied by the owner and securely muzzled and restrained with a chain or a braided leather, nylon or manila lead or leash having a minimum tensile strength of three hundred (300) pounds and not exceeding ten (10) feet in length, except such length shall not exceed three (3) feet in the case of a dangerous dog.

Special dog warden. Any member of the Somerset City Police Department.

2. Duty of all dog owners to be responsible owners.

Every owner of a dog shall have the duty to exercise reasonable care and shall take all necessary steps and precautions to protect other people, property, and animals from injuries or damage which might result from the owner's dog's behavior, regardless of whether such behavior is motivated by mischievousness, playfulness, or ferocity. If the owner of any dog is a minor, the custodian, parent or guardian legally responsible for such minor shall also be responsible to ensure that all provisions of this article are followed.

3. Control of all dogs.

Every owner of a dog shall have the duty to ensure that the dog is kept under control and that reasonable care and precautions are taken to prevent the dog from leaving, while unattended, the real property limits of its owner, possessor, or custodian, and that:

(1) The dog is securely and humanely enclosed within a house, building, fence, pen, or other enclosure (as used in this section, the word "enclosure" shall be defined in its ordinary sense and shall not be defined as set forth above, it being the intent of this article that the definition of enclosure as set forth in the above definition section be applicable only to "dangerous dogs") out of which it cannot climb, dig, jump or otherwise escape on its own volition; and such enclosure must be securely latched at any time the dog is left unattended; or

(2) The dog is securely and humanely restrained as set forth above by chain, cable, or trolley, or other tether of sufficient strength to prevent escape; or

(3) The dog is on a lead or leash and under the control of a competent person; or is off lead or leash and obedient to that person's command and that person is present with the animal any time it is not restrained as provided for in subsections (1) and (2) above while on the owner's property.

4. Additional requirements for precautions to be taken by owners of dangerous dogs.

(a) All dangerous dogs shall be confined in an enclosure. It shall be unlawful for any owner to maintain a dangerous dog upon any premises which does not have a locked enclosure. It shall be unlawful for any owner to allow any dangerous dog to be outside of the dwelling of the owner or outside of the enclosure unless it is necessary for the owner to obtain veterinary care for the dangerous dog or to destroy the animal or to comply with commands or directions of the animal control authority or animal control officer with respect to the dangerous dog. In such event, the dangerous dog shall be securely muzzled and restrained with a lead or leash and shall be under the direct control and supervision of its owner.

(b) The owner of a dangerous dog shall display a sign conspicuously on his or her premises warning that there is a dangerous dog on the premises. The sign shall be readily visible and capable of being read from the public highway. A similar sign shall be posted on the pen or kennel of the dangerous dog.

(c) The owner shall immediately notify the animal control authority or animal control officer if a dangerous dog is on the loose, is unconfined, has attacked another animal or has attacked a human being, or has died.

(d) The animal control authority or animal control officer is hereby empowered to make whatever inquiry is deemed necessary to ensure compliance with the provisions of this article, and the animal control authority or animal control officer is hereby empowered to seize and impound any dangerous dog whose owner fails to comply with the provisions hereof, subject to the right of such owner to contest the seizure or impoundment, as provided in this article, in the Pulaski District Court.

(e) In the event the owner of the dangerous dog refuses to surrender the dog to the animal control authority or animal control officer, then the animal control authority or animal control officer may request a police officer to obtain a search warrant from a judge of the Pulaski District Court and seize the dangerous dog upon execution of the warrant.

5. Enforcement of restriction on dangerous dogs.

In the event a public law enforcement officer, or the animal control authority or animal control officer has probable cause to believe that a dangerous dog is being harbored in the city in violation of this article, said individual or entity may:

(1) Order the violation immediately corrected and cite the owner or keeper to appear in Pulaski District Court for the violation; or

(2) If the violation cannot be immediately corrected and the dog is posing an imminent serious threat to human beings or other domestic animals, the dog may be seized and impounded, in which case the owner shall be cited to appear in Pulaski District Court for the violation. At the owner's request and expense, such impoundment may be at a veterinarian or licensed kennel of the owner's choosing. If the court rules that the dog is not dangerous as defined, it will be released to the owner upon payment of the expense of keeping such dog. If the court rules that the dog is dangerous as defined, the dog will be released to the owner after payment of any fees and penalties, and upon presentation of proof by the owner that the dog will be kept restrained or confined as specified in this article.

If, within seven (7) days after impoundment, the owner of an alleged dangerous dog fails to either provide proof that the dog will now be kept restrained or confined in compliance with the provisions of this article or fails to reclaim it from the animal control authority or animal shelter after impoundment, it may be humanely euthanized per the particular shelter's rules and regulations.

6. Custodial liability.

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

7. Destruction of impounded dogs.

(a) No dog shall be destroyed within seven (7) days of being impounded unless necessary to prevent or stop an attack upon a person or another animal, for humane reasons related to sickness or injury of the dog, or as otherwise provided by law.

(b) An impounded dog shall not be destroyed pending an owner's appeal of a district court order of destruction if the appeal shall have been filed within seven (7) days of impoundment or order of destruction of such dog and notice shall have been served within seven (7) days of the impoundment of such dog upon the animal control authority. The animal control authority shall have the burden of proving that the dog should be destroyed pursuant to this article.

(c) Other provisions of this article notwithstanding, any dog which has bitten or scratched someone shall be quarantined for ten (10) days from the time the bite or scratch occurs. Any dog suspected of having rabies shall be quarantined for ten (10) days and the appropriate state authorities notified to investigate as required by law. Any owner who fails to properly quarantine their dog is subject to citation for violation of this section and the dog shall be removed to the county animal shelter for the remainder of its quarantine period. The owner shall be responsible for all quarantine fees.

(d) A dog whose owner is unavailable or incapable of quarantining the dog may be taken by the animal control authority or animal control officer and quarantined at the appropriate animal shelter for the prescribed period.

8. Dog fighting and harboring.

No person shall own or harbor any dog for the purpose of dog fighting, or train, torment, badger, bait, or use any dog for the purpose of causing or encouraging said dog to unprovoked attacks upon human beings or domestic animals. No person shall possess with intent to sell, or offer for sale, breed, or buy or attempt to buy within the City of Somerset any dangerous dog.

9. Action for damages; destruction of offending dangerous dog.

If any dangerous dog shall, when unprovoked, kill or wound, or assist in killing or wounding any sheep, lamb, cattle, horse, hog, fowl or other 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 the enclosure of the owner or keeper of such dangerous dog, or while otherwise off the property of the owner or keeper, whether or not such dangerous dog was on a leash and securely muzzled or whether the dangerous dog escaped without fault of the owner or keeper, the owner or keeper of such dog shall be liable to the person damaged as aforesaid, for all damage sustained, to be recovered in a civil action with cost of the suit. It is rebuttably presumed as a matter of law that the owning, keeping or harboring of a dangerous 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 dangerous dog knew that such dangerous dog possessed the propensity to cause such damage or that the dangerous dog had a vicious nature. Upon such attack or assault upon a human being, an animal control officer, including the special dog warden as defined above, is hereby empowered to confiscate and destroy such dangerous dog not less than seven (7) days after confiscation, unless sooner destruction of the dog is necessary to prevent or stop an attack upon a person or another animal, or for humane reasons related to sickness or injury of the dog. Within the said seven-day period after confiscation, the owner of the dog may appeal to the Pulaski District Court for relief under this article on the grounds that the dog is not a "dangerous dog" as specified herein or that it has not violated the terms of this section. Unless relief from destruction is granted by the Pulaski District Court within the said seven-day period, the animal control officer or special dog warden shall follow through with the humane euthanization of the said dangerous dog.

10. Penalties.

(a) If any dog shall, when unprovoked, kill, wound, or assist in killing or wounding any dog, the owner of said dangerous dog shall be guilty of a misdemeanor and shall pay a fine of not less than two hundred fifty dollars (\$250.00) nor more than five hundred dollars (\$500.00). For each subsequent violation, the owner or keeper of said dog shall pay a fine of not less than three hundred fifty dollars (\$350.00), nor more than five hundred dollars (\$500.00).

(b) If any dog shall, when unprovoked, attack, assault, wound or otherwise injure a human being, the owner shall be deemed guilty of a Class A misdemeanor and shall, upon conviction, be punished by a fine of not less than two hundred fifty dollars (\$250.00) nor more than five hundred dollars (\$500.00), or imprisoned for a period not to exceed six (6) months, or both.

(c) If any dog shall, when unprovoked, attack, assault, wound or otherwise cause substantial physical injury to or kill a human being, the owner shall be deemed guilty of a Class A misdemeanor and may, upon conviction, be punished by a fine of five hundred dollars (\$500.00) and imprisoned for a period of not less than six (6) months nor to exceed twelve (12) months.

(d) Any person or owner violating any provision of this article other than specified above in this section shall be deemed guilty of a Class A misdemeanor and shall, upon conviction, be punished by a fine not to exceed five hundred dollars (\$500.00), or be imprisoned for a period not to exceed twelve (12) months, or be both so fined and imprisoned. Each day a violation continues shall constitute a separate offense.

ARTICLE IV. LAW ENFORCEMENT ANIMALS

1. Definitions.

As used herein the following terms shall have the following meanings:

Law Enforcement Animal. Any horse or dog owned by a governmental law enforcement agency that has been trained to be ridden by a law enforcement officer in the performance of law enforcement activities; trained to detect by scent the presence of controlled substances and marijuana as defined in KRS 218A.010; trained to track, follow or trail persons by the detection of bodily odors; or trained to aid law enforcement officers otherwise in the performance of law enforcement activities.

Death. The cessation of life within one hundred eighty (180) days of the infliction of an injury to a law enforcement animal.

Intentionally. Consciously wanting a result to occur.

Wantonly. Being aware of substantial and unjustifiable risk that an undesirable result (death, injury, or serious injury) will occur but consciously disregarding the risk. This risk must be of a nature and degree that disregarding it constitutes a gross deviation from the standard of care that applies.

2. Abuse of a law enforcement animal prohibited.

(a) It shall be unlawful for any person to intentionally or wantonly cause the death or injury of a law enforcement animal, unless the same is done for humane purposes.

(b) A conviction under this provision is a misdemeanor and is punishable by a fine not exceeding five hundred dollars (\$500.00) or imprisonment for a term not exceeding six (6) months or by both fine and imprisonment in the discretion of the court.

3. Attempting or threatening abuse prohibited.

(a) It shall be unlawful for any person to threaten or attempt to cause death or injury to a law enforcement animal.

(b) A conviction under this provision is a misdemeanor and is punishable by a fine not exceeding Two Hundred Fifty Dollars (\$250.00) or imprisonment for a term not exceeding sixty (60) days or by both fine and imprisonment in the discretion of the court.

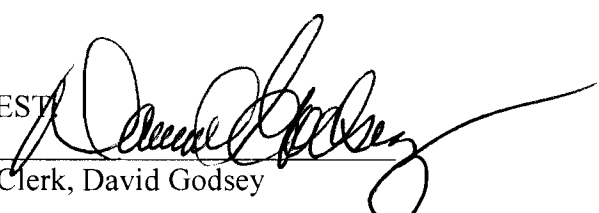
ARTICLE V. SEVERABILITY; CONFLICTING ORDINANCES; REPEAL OF FORMER ORDINANCES; EFFECTIVE DATE

If any part of this Ordinance is deemed by a court of competent jurisdiction to be unenforceable or unconstitutional, the remaining provisions of this Ordinance shall continue in full force and effect. Any City Ordinance in conflict with this Ordinance, or any City policies in conflict with the ones enacted herein are hereby repealed in so far as the same are in conflict herewith. This Ordinance shall hereby **repeal in full City of Somerset Ordinances 288 and 652**, and further **fully repeals any and all amendments of said Ordinances**. This ordinance shall be in full force and effect upon passage, approval, and publication according to law.

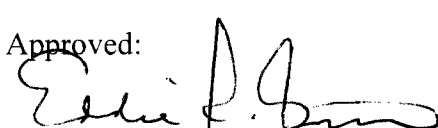
FIRST READING June 9, 2008

SECOND READING June 23, 2008

ATTEST


City Clerk, David Godsey

Approved:


Mayor, Eddie Girdler