

GENERAL ORDINANCE NO. 42 -2005
AN ORDINANCE AMENDING GENERAL ORDINANCE NO. 13-2000
ANIMAL CONTROL ORDINANCE

General Ordinance No. 13-2000 is hereby amended and replaced as follows:

It is the purpose of this ordinance to promote the health, safety, and general welfare of the residents of The City of Marion by reducing the number of stray dogs and cats and to regulate the breeding practices of pet owners and breeders through legislation which is both reasonable and enforceable. The council finds that each year thousands of dogs and cats are euthanized in the City of Marion because they are not wanted.

(A) *Definitions.* For purposes of this ordinance, the following terms shall be defined as set forth below:

(1) Animal means any living non human, warm *or cold* blooded, vertebrate creature, or reptile, domestic or wild.

(2) Animal Shelter means any premises designated by the City as a site for impounding and caring for animals, confined under this Code section.

(3) Animal Control Officer means those persons designated by the Animal Control Service to enforce this Code section.

(4) Animal Control Service means the persons, partnership, corporation, association, or society designated by the Common Council of the City of Marion to enforce this ordinance.

(5) Owner means any person owning, harboring, or keeping any animal.

(6) Restraint means confinement to the premises of the owner, *while on or* being outside those premises while accompanied by a responsible person keeping control of the animal, being on a leash, chain, or confinement in a fenced area.

(7) Abandonment means the voluntary relinquishment of possession by the Owner with the intention of terminating his or her ownership for 72 hours, but without vesting possession in any other person.

(8) Dog House means housing that is specifically made for housing of a dog,, with an opening on one side for the animal to enter, and with a roof or an “igloo” style.

(9) Humane Society means the Marion Grant County Humane Society, Inc.

(10) Identification means bearing either a microchip, rabies tag, tag with owner's name, address, phone number, or tattoo applied by a licensed veterinarian.

(11) Unaltered animals means an animal that is intact or has not been spayed or neutered.

(B) No owner shall fail to keep any of his or her animals under restraint at all times. All dogs and cats must have some type of identification at all times. Any person who violates this provision of this code and upon deemed guilty shall pay a fine not less than Fifty Dollars (\$50.00) for the first offense, One Hundred Dollars (\$100.00) for second offense, and Two Hundred and Twenty Five Dollars (\$225.00) for third offense.

(1) Provided, however, if the unrestrained animal causes bodily injury to another person or animal the fine will be not less than One Hundred Twenty Five Dollars (\$125.00) and the Court shall conduct a vicious canine hearing relating to the animal.

(C) Unrestrained animals may be taken by the City Police Department or an animal control officer, and impounded in a animal shelter, and there confined in a humane manner. Impounded animals shall be kept for not less than (72) hours unless reclaimed by their owners. Animals not reclaimed by their owners within seventy-two (72) hours may be humanely disposed of by the Animal Control Service or adopted by a new owner.

(D) An owner reclaiming an impounded animal shall pay a fee to the person in charge of the animal shelter. That fee shall be equal to the actual cost of housing the animal, not to exceed fifty dollars (\$50.00) per day. If those fees are not paid, the animal shall be humanely disposed of or adopted by a new owner. The owner shall be deemed guilty of an ordinance violation.

(E) This section of the ordinance shall apply to unaltered cats and dogs to promote the health, safety, and general welfare of the residents of the city by reducing the number of stray dogs and cats.

(1) Every owner of an unaltered dog or cat that is a least six months of age shall obtain an "unaltered animal license" annually, for each dog or cat, issued by the Humane Society for the amount of forty-three dollars (\$43.00). The forty-three dollars (\$43.00) shall be deposited in a fund set up by the Humane Society that is specifically for altering animals at a discount for qualified members of the community.

(a) If an unaltered animal is found without an "unaltered animal license", the animal shall be impounded by the Animal Control until the owner obtains the proper license. If the license is not obtained within Seventy-two (72) hours, said animal shall become the property of the Animal Control and either humanely disposed of or adopted to a new owner.

(b) If an owner obtains and “unaltered animal license” and within 30 days gets said animal altered, than the fee of the license shall be reimbursed back to the owner.

(c) Revocation of “unaltered animal license”. The “unaltered animal license” shall be revoked if the owner allows his or her animal be unrestrained two times or be outside of a secured six sided enclosure while in estrus (heat) or to produce a litter of young.

(i) After the Animal Control Service has filed a complaint in the municipal court, the court after hearing all the evidence shall make a final determination as to whether the person should have his or her license revoked. If the court finds that revocation is appropriate, it shall enter a judgment ordering alteration of said animal within Thirty (30) days.

(ii) If the owner does not comply to have his or her animal altered the owner shall be subject to a habitual offender hearing.

(d) An “unaltered animal license” shall not be required for dogs used by law enforcement agencies, service dogs, or animals not suitable for alteration as certified by a licensed veterinarian.

(2) Any dog or cat adopted, sold, given away, or traded by the humane society to a new owner of the city must be spayed or neutered by the age of six months or within 30 days, whichever is later. If the animal is not spayed or neutered by said time the animal shall be picked up by the Animal Control and be altered. The owner shall be responsible for the cost of the alteration. The owner shall be cited with a violation of this provision. If the owner is found guilty the fine shall be the cost of the alteration.

(3) Major Breeder's Permit.

(a) A major breeder's permit shall be obtained by: (1) Any person who intentionally causes the breeding of multiple cats or dogs or makes a cat or dog available for breeding purposes; or (2) Any person who offers for sale, sells, trades, or receives other compensation for the young of a cat or dog.

(b) The breeder shall: (1) Not allow the birthing of more than one litter per female dog or cat in a 12-month period; and (2) Furnish the Animal Shelter with information on the birth of each litter of dogs or cats as may be required by the Animal Shelter to register that litter of dogs or cats with Animal Control, and to be assigned a litter number for each litter. The breeder of this litter must obtain the name, address, phone number of buyer, and must immunize all animals in each litter.

(c) The cost of the Major Breeder's Permit shall be \$100.

(4) Minor Breeders Permit.

(a) A minor breeder's permit shall be obtained by: (1) Any person who intentionally or accidentally causes the breeding of a single cat or dog; or (2) Any owner or person having custody of a dog or cat that has delivered a litter or caused the delivery of a litter, who chooses not to relinquish the animal to the Animal Shelter and also

chooses not to have the animals spayed or neutered shall cause the animal to be implanted with a microchip and register the dog or cat within 30 days of having received notice to accomplish this procedure for Animal Control;

(b) Any such person shall: (1) Be allowed to breed only one dog or one cat which results in the birthing of maximum of one litter in a 12-month period;

(c) Any owner or person having custody of a dog or cat which has delivered a litter, who chooses not to relinquish said animal to the animal control and also chooses not to have the animal neutered, will be required to purchase a major breeder's permit at the rate of \$100 plus any applicable kennel/cattery permit fee. The permit shall be issued provided all requirements of this section are met.

(d) The cost of a minor breeder's permit shall be \$50. Provided, however, that the breeder may be reimbursed \$40 of the \$50 cost in the event that the breeder spays or neuters the breeding animal within 10 weeks of the birth of the litter.

(F) No owner shall allow his or her animals to become a public nuisance. Animals who engage in excessive, continuous or untimely barking, harassing persons, chasing vehicles, habitually attacking other animals, trespassing upon school grounds, or trespassing, damaging private property shall be deemed a public nuisance, and shall be impounded.

(G) The person responsible for any animal which has bitten a person or another animal must report the incident to the Animal Control Agency, or local Law Enforcement. Any animal which bites a person, or which has possibly been exposed to rabies, shall be quarantined for not less than ten (10) days in an animal shelter, in a kennel, or with a veterinarian. During quarantine, if the animal is confined in the animal shelter, a charge equal to the actual cost of housing the animal, not to exceed fifty dollars (\$50.00) per day shall be paid to the Humane Society. Also during the quarantine period, the owner must provide a current rabies vaccination certificate for his cat or dog that is being quarantined. If proof of vaccination cannot be supplied, the animal will be vaccinated by a veterinarian at the owner's expense before release. Upon receiving information about any animal which has bitten a person or which has possibly been exposed to rabies, the Police Department shall notify the animal shelter. If a veterinarian determines that an animal in quarantine is a possible rabies carrier, the County Health Office shall be notified. Any necessary action shall be to confirm the diagnosis and disposal of the animal.

(H) Each owner of a dog/cat which dog/cat is above the age of six (6) months must procure a rabies vaccination for the animal. At the time of the vaccination, the owner shall purchase a rabies tag from the veterinarian. The animal must wear the tag at all times. Any person who is found to have violated this provision of this code shall pay a fine of not less than Thirty-five dollars (\$35.00) for the first offense, Seventy-five dollars (\$75.00) for the second offense and One hundred twenty-five (\$125.00) for the third offense.

(1) However if the unvaccinated animal causes bodily injury to another person or animal the fine will be not less than One hundred twenty-five dollars (\$125.00) and the Court shall conduct a vicious canine hearing relating to the animal..

(I) This section of the code applies to the care of animals:

(1) No owner shall recklessly fail to provide animals with sufficient good and wholesome food and water. Any person who violates this provision and found guilty shall pay a fine not less than Fifty dollars (\$50.00) for the first offense, One hundred dollars (\$100.00) for the second offense, and Two hundred twenty-five dollars (\$225.00) for the third offense.

(2) No owner shall recklessly fail to provide animals with proper shelter and protection from the weather. Any person who violates this provision and found guilty shall pay fine not less than Fifty dollars (\$50.00) for the first offense, One hundred dollars (\$100.00) for second offense, and Two hundred twenty-five dollars (\$225.00) for third offense.

(3) No person shall recklessly fail to provide veterinary care for animals. As used in this section, "veterinary care" means proper grooming, medical treatment, and vaccinations against common disease. Tail docking, ear cropping, or spay/neutering, when done by an individual who is not a licensed veterinarian, is a violation of this section. Any person who is found to have violated this provision shall pay a fine not less than Seventy-five dollars (\$75.00) for the first offense, Two hundred twenty-five dollars (\$225.00) for the second offense, and Three hundred sixty dollars (\$360.00) plus be deemed a habitual offender for the third offense.

(4) No person shall recklessly beat, cruelly ill-treat, torment, overload, overwork, or otherwise abuse any animal. Any person who is found to have violated this provision shall pay a fine not less than Seventy-five dollars (\$75.00) for the first offense, Two hundred twenty-five dollars (\$225.00) for the second offense, and Three hundred sixty dollars (\$360.00) plus be deemed as a habitual offender for the third offense.

(5) No person shall harbor any animal for the purpose of animal fighting. If an owner possesses, harbors, or trains an animal that is bearing a scar, a wound, or an injury consistent with participation in or training for animal fighting contests, such evidence shall be prima facie evidence of the commission of harboring an animal for fighting purposes. Any person found guilty of this provision shall pay a fine not less than Eight hundred dollars (\$800.00) for the first offense, Two thousand five hundred dollars (\$2,500.00) and be deemed as a habitual offender for the second offense. Any animal found in this condition shall be impounded at the Animal Shelter until a judgment has been made in a court of law.

(a) If a person is found guilty of harboring animals for the purpose of fighting, the animals that are in question shall become the property of the Humane Society and be humanely disposed of.

(b) If the person is found not guilty of this provision he/she is not liable for any expenses occurred while animal is housed at the Animal Shelter and the animals in question shall be returned to the owner.

(6) No owner shall abandon any animal. If a person is found guilty of this provision the fine shall be not less than Fifty dollars (\$50.00) for the first offense, One hundred dollars (\$100.00) for the second offense, and Two hundred twenty-five dollars (\$225.00) for the third offense.

(7) No person shall own, store, sell, or purchase any animal fighting paraphernalia including, but not limited to, treadmills, cat mills, spring poles, or animal fighting literature. Animal fighting literature can only be purchased by Animal Control Services for the purpose of investigation. Any person found guilty of this provision shall pay a fine of not less than Six hundred dollars (\$600.00) for the first offense, One thousand four hundred dollars (\$1,400.00) for the second offense, and Two thousand five hundred dollars (\$2,500.00) plus be deemed as a habitual offender for the third offense.

(J) No animal shall be tied or fastened by any rope, chain, or cord that is directly attached to the animal's neck. Restrained animals must wear a properly fitted collar or harness made of leather or nylon, not of the choker type. This is not to prohibit the proper use of choker collars in the training of animals. The tying device shall be attached to the animal's collar or harness and shall be at least twelve (12) feet of free length. All animals tethered on the owner's property shall not be able to get closer than three (3) feet from any fence or from another tethered animal. No animal will be tethered for 24 hours per day. Reasonable exercise will be provided for the animal by the owner.

(K) Animals found in cruel, abusive, neglectful situations or abandoned, as defined in the section above, may be promptly impounded if no immediate contact with a responsible person can be made; provided however, that the Animal Control Officer shall attempt to leave written notice on the door of the residence telling the location of the animal and the reason for impoundment.

Animals so removed will be impounded and held at the Animal Control Agency or designated facility until such time the violator is in compliance with this chapter; provided, however, that in no event shall this period exceed *three (3)* days, at which time the animal shall become the property of the Animal Control Agency, unless an extension is necessary for the Animal Control Officer to have ample time to prepare a court case if prosecution is warranted.

In the case of animals impounded for quarantine at the Animal Control Agency, the animal will become property of the Agency if not claimed by closing time of the Agency on the eleventh day of quarantine.

Animals impounded for reasons beyond the control of the owner, such as, but not limited to, house fire, death of the owner or arrest of the owner, will be held for 10 days during which time a reasonable effort will be made to contact the owner and/or their representative. After the tenth day of impoundment, the animal will become the property of the Animal Control Agency.

An Animal awaiting disposition by the court shall remain in the custody of the Animal Control Agency, unless such disposition is made, or placed in a foster home until legal arrangements have been completed.

Animals so removed may be transported to a licensed veterinarian for examination and/or treatment. If, in the opinion of said veterinarian, the animal must be destroyed, euthanasia will be performed immediately. Cost of treatment, euthanasia and/or care shall be the responsibility of the owner/agent.

(L) All animals kept inside or in a pen, tied, fastened, leashed, or enclosed by a fence shall be kept in a sanitary manner. No animal shall be kept in feces, mud, water, or with any debris. The person responsible for the animals shall regularly maintain all areas of the animal confinement. Any person found guilty of this provision shall pay a fine not less than Fifty dollars (\$50.00) for the first offense, One hundred dollars (\$100.00) for the second offense, and Two hundred twenty-five dollars (\$225.00) for the third offense.

(M) Persons responsible for an animal, except visually impaired person working with service dogs, shall immediately remove the animal's excrement from public lands, sidewalks and right of way (property between sidewalks and streets) or from the property of another.

(N) Any person operating a motor vehicle who causes injury or death to an animal shall stop at once, assess the extent of injury, and immediately notify the owner or the Animal Control Service or the Police Department.

(O) No animals shall be left unattended in a vehicle in excessive heat (based upon Standardized Veterinarians Report) or when the conditions in that vehicle would constitute a health hazard to the animal.

(P) This section of the ordinance shall apply to "vicious canines". "Vicious canines include:

(1) Any canine which, according to the record of the appropriate authority; provided, this section shall not apply to animals under the control of a law enforcement or military agency:

(a) Did bite or attack once, causing wounds or injuries creating a potential danger to the health or life of a human being without provocation in a public or private place where the person was conducting himself peacefully and lawfully;

(b) Required defense action by any person to prevent physical injury or property damage, where the dog has acted without provocation, in a public or private place where the person was conducting himself peacefully and lawfully;

(c) Could not be controlled or restrained at the time of a bite or attack upon a animal or person; and

(2) Any canine owned, harbored or trained primarily or in part for the purpose of canine fighting.

(Q) A canine shall be declared a “vicious canine” only after the Animal Control Service has received an Affidavit of Complaint by an individual under oath, stating all pertinent facts to support the allegation that the canine is vicious. If the Animal Control Service determines the complaint is valid, the Animal Control Services shall file a complaint in municipal court. The City Judge, after hearing all the evidence, shall make the final determination as to whether the dog qualifies as a “vicious canine”.

(1) Any owner of a dog which qualifies under these statues as a “vicious canine” must:

(a) Register the canine with the Animal Control Service within three (3) months of the effective date of the ordinance, which registration shall include two color photographs of the canine.

(b) Notify the Animal Control Service immediately if the canine is given or sold to a new owner, providing the Animal Control Service with the new owner’s name, address, and telephone number. Registration will continue, but the new owner must comply with the other provisions of this statute.

(c) Notify the Animal Control Service immediately if the canine becomes loose or unconfined, attacks livestock, another domestic animal or human being, or inflicts any property damage.

(d) Notify the Animal Control Service of all offspring born to the canine.

(e) Notify the Animal Control Service of the death of the canine.

(f) Confine the canine in a humane way inside or outside of the owner’s property, in a “secure enclosure” (as described in Section E of this Code) so that it cannot escape of its own volition. The owner’s property must contain a sign easily readable to the public saying “Beware of Dog”.

(g) Allow the canine to go off the owner’s premises only when it is muzzled and kept on a leash or restraint, no more than six feet long, under the control of a responsible person.

(h) The canine must be “tattooed” or have a microchip placed in the animal by a licensed veterinarian.

(j) Upon a second unrelated bite conviction, the canine may become the property of the Marion-Grant County Humane Society, by order of the Court, to be humanely disposed of.

A violation of this section of the ordinance shall be subject to the penalties described in all other parts of the ordinance. In addition, the City Judge in his/her discretion can order the canine impounded in the Humane Society, at the owner's expense, until the owner complies with the terms of this section, or can order the destruction of the animal when necessary, to preserve the public health, safety and the welfare of the community.

(R) No owner shall keep more than four dogs or cats, in any combination, that are over 6 months of age that are unaltered. This does not apply to any government animal control agencies, animal rescue organizations, humane societies, or societies for the prevention of cruelty to animals that have implemented an ongoing spay/neutering plan. All unaltered cats and dogs over the amount of four shall be removed by the animal control service and upon found guilty of this provision shall pay a fine of Fifty dollars (\$50.00) for the first offense, One hundred dollars (\$100.00) for the second offense, and Two hundred twenty-five dollars (\$225.00) and be deemed as a habitual offender for third offense.

(S) No person shall place or keep any of the following animals within the city limits of the City of Marion: any and all hoofed animals, including but not limited to poultry, equine (horses, mules), porcine (pigs), bovine (cattle), sheep or goats. This section shall not apply to ducks, geese, or swans which are confined in an owner's yard containing a pond or other water area.

(T) It shall be unlawful and is hereby declared to be a public nuisance for any person to use, place, set or cause to be set within the city or upon lands owned by the city any traps except cage type live traps approved by the Animal Control Agency and used for the control of unrestrained or potentially dangerous animals. This prohibition shall not apply to any trap specifically designed to kill rats, mice, gophers or moles so long as the owner of the property is aware of the location where the trap(s) are set and monitors said trap(s) at least once every 24 hours.

Traps discovered by the Animal Control Agency to have been unlawfully set in the city may be seized and used as prima-facie evidence that a violation has been committed. Upon conviction, said trap(s) shall be forfeited to and disposed of by the Animal Control Agency.

(U) Any person who shall become apprised of the death of any animal owned by that person shall, within 12 hours thereafter, cause the same to be removed from the premises and taken to the Animal Control Agency, veterinarian or cemetery for disposal.

(V) The Animal Control Officer shall have powers in the enforcement of this Code section. No person shall interfere with, hinder, molest, abuse, or *fail to provide identification to the Animal Control Officer* in the exercise of these powers.

(W) Any person who violates any provision of this Code section shall be deemed guilty of an ordinance violation and upon conviction shall be fined not less than Twenty-five dollars (\$25.00) for the first offense, Seventy-five dollars (\$75.00) for second offense, and One hundred twenty-five dollars (\$125.00) for third offense, *unless any provision of this ordinance declares otherwise*. The maximum fine for any offense shall be Two thousand five hundred dollars (2,500.00). Each day any violation continues or occurs shall be deemed a separate offense.

(X) A person shall be declared a habitual offender only after the Animal Control Service has filed a complaint in the municipal court. The City Judge after hearing all the evidence shall make a final determination as to whether the person qualifies as a habitual offender.

(1) A person shall be declared a habitual offender if:

(a) Offender has been found guilty of four or more of the same provisions in the last seven years, or;

(b) Offender has been found guilty of seven or more on any combination of the provisions in the last three years; or

(c) Offender has been found guilty of a provision of this ordinance which designates the Offender as a habitual offender; or

(d) Offender has been found guilty of any section of Indiana Statue Codes 35-46-3-7 thru 35-46-3-13.

(2) Any person found guilty of being a habitual offender shall not own, have possession of, or harbor any animals for a minimum of one year but not more than five years as determined by the court. Any animals owned or in the possession of the habitual offender at the time of judgment shall be surrendered to the Humane Society and become the property of the Humane Society.

(3) Any person after being found guilty of a habitual offender who continues to own, harbor, or have possession of an animal in violation of an order entered pursuant to subsection X(2) above shall pay a fine of Two thousand five hundred dollars (\$2,500.00) plus be subject to a court hearing for being in contempt of court.

Y. Severability and Effect. If any provisions of this ordinance or any application thereof, is held invalid, the invalidity shall not effect other applications of the provisions or terms of this ordinance which reasonable can be given effect without the invalid provision or term or the application thereof.

Notwithstanding any provision of this ordinance, this ordinance shall not be construed to repeal any former ordinance as to any offense committed against such former ordinance or as to any act done, any penalty, forfeiture or punishment so incurred or any right accrued or claim arising under the former ordinance.

This ordinance shall be in full force and effect from and after its passage and any and all necessary approval by the Mayor and due publication.

PASSED AND APPROVED by the Common Council of the City of Marion, Indiana, this ____ day of _____, 200 ____.

President, Marion Common Council

ATTEST:

City Clerk

PRESENTED by me to the Mayor of the City of Marion, Indiana, this ____ day of _____, 200 ____.

City Clerk

APPROVED by me as Mayor of the City of Marion, Indiana, this ____ day of _____, 200 ____.

Mayor, Wayne Seybold