

ORDINANCE NO. 20-07-14

AN ORDINANCE PROHIBITING ANIMALS TO STRAY

WHEREAS, the improper control and maintenance of animals within the Town of Borden, Indiana, (the "Town") creates situations which are hazardous to the health and safety of the Town's residents;

WHEREAS, there exists in the Town a need for an ordinance regarding the control and maintenance of animals for the general health, safety, and welfare of the citizens of the Town;

WHEREAS, the Town Council desires to provide procedures for the enforcement of regulations for the safe maintenance and control of animals;

WHEREAS, pet waste left on the ground washes into local waterways, and pet waste is a major source of E. coli pollution;

WHEREAS, the Town Council reviewed the existing regulations in Ordinance No. 92-5-11, and, after careful consideration, are of the opinion that said regulations should be repealed and replaced with new, updated, and revised regulations;

NOW, THEREFORE, BE IT ORDAINED by the Town Council of the Town of Borden as follows:

Section 1. Title.

This Ordinance and all ordinances supplemental or amendatory thereto shall be known as the "Town of Borden Animal Control Ordinance" (hereinafter the "Ordinance").

Section 2. Definitions. For the purpose of this Ordinance, the following definitions shall apply, unless the context clearly otherwise indicates, or requires a different meaning:

"Agent" means a person eighteen years of age or older authorized by an Owner or Custodian to act on behalf of such Owner or Custodian with regard to an Animal.

"Animal" means any living, non-human vertebrate or invertebrate creature, domestic, wild or exotic. This definition shall exclude any Dog being used by a law enforcement officer while carrying out the law enforcement officer's official duties.

“At Large” means any Animal neither Under Restraint nor within the confines of the real property of its Owner, Custodian, or Agent.

“Custodian” means any person who permits an Animal to habitually remain, lodge, or be fed within his or her home, store, enclosure, yard, place of business, or premises. An Animal shall be presumed harbored if it is fed or sheltered by the person for three or more consecutive days.

“Dog” means any domestic member of the canine family of animals.

“Immediately” means at once, without delay.

“Owner” means any person eighteen years of age or older, partnership, corporation, limited liability company, sole proprietorship, or other legally recognized entity owning one or more Animals.

“Service Animal.” Any Animal that is individually trained and certified to perform tasks for a person with a disability such as, but not limited to, guiding people who are visually impaired, alerting people who are hearing impaired, or assisting people in wheelchairs.

“Under Restraint” means within a secure enclosure, on an attended lead or leash, or controlled by an electronic device of sufficient strength that allows control to be maintained of the Animal.

Section 3. Animals At Large.

It shall be a violation of this Ordinance for an Owner, Agent, or Custodian of an Animal to permit said Animal to be At Large. However, it is provided that a Service Animal need not be Under Restraint when under the reasonable control of its Owner, Custodian, or Agent.

Section 4. Defecation of Dogs on Public and Private Property.

An Owner, Agent, or Custodian of an Animal commits a violation of this Ordinance if he, she, or it permits a Dog to defecate on any private or public property in the Town and fails to immediately remove the excrement and properly dispose of it in a sanitary manner.

It shall be an affirmative defense to a charge of violating this section that:

A. The Dog involved is a Service Animal trained to assist disabled individuals and the person charged has a disability which prevents the individual from removing the excrement and properly disposing of it in a sanitary manner;

B. The subject property was owned, leased, or controlled by the Owner, Agent, or Custodian at the time of the violation; or

C. The owner, or person in control, of the subject property gave prior consent for the dog to defecate on the property.

Section 5. Penalty Provisions.

A. Any person found to be in violation of this Ordinance shall be guilty of an ordinance violation and shall be subject to a civil penalty under this Ordinance. Civil penalties are to be assessed as follows:

1. \$50.00 for the first offense;
2. \$75.00 for the second offense; and
3. \$100.00 for the third and any subsequent offense.

B. Payment. Fines paid pursuant to this ordinance shall be paid at the Ordinance Violation Bureau and are hereby incorporated into the fine schedule of Ordinance No. 17-01-10.

C. Suit for Civil Penalties. The Town Attorney, in the name of the Town, may file a complaint in a court of competent jurisdiction seeking a judicial determination that this Ordinance has been violated and requesting the imposition of civil penalties

D. Expenses. The Town may recover reasonable attorney fees, court costs, an other expenses associated with the enforcement of this Ordinance from any person found to be in violation of this Ordinance.

Section 6. Severability.

Each provision of this Ordinance shall be construed as separate. If any part of this Ordinance shall be held invalid or unenforceable by a court of competent jurisdiction, such part shall be deemed severable and the invalidity thereof shall not affect the remaining parts of this Ordinance. In the event that any provision of this Ordinance is determined by a court of competent jurisdiction to be pre-empted by a state or federal law or regulation, the applicable provision shall

automatically be deemed amended by eliminating the pre-empted provision and incorporating in its place the applicable provision of the pre-empting state or federal law or regulation.

Section 7. Construction and Effective Date.

All ordinances and parts of ordinances in conflict with this Ordinance are hereby repealed upon the effectiveness of this Ordinance. Ordinance No. 92-5-11 ("An Ordinance Prohibiting Animals to Stray and Declaring Said Animals a Public Nuisance") is hereby repealed in its entirety.

The expressed repeal by this Ordinance and any implied repeal by this Ordinance of any other ordinance or part of any other ordinance does not affect any rights or liabilities accrued, penalties incurred, or proceedings begun prior to the effective date of this Ordinance. These rights, liabilities, and other proceedings are continued and penalties shall be imposed and enforced under the repealed ordinance as if this Ordinance had not been adopted.

This Ordinance shall be in full force and effect from and after its passage and adoption by the Town Council of the Town of Borden, Indiana, and publication in accordance with the requirements of Indiana law.

Passed and adopted on this 14 day of July, 2020.

BORDEN TOWN COUNCIL:



John Hagest



Paul Brewer



Ruth Sparks

ATTEST:



Mindi Holmes, Clerk-Treasurer

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