

**ORDINANCE NO. 2010-**

**AN ORDINANCE OF THE CITY OF GILROY AMENDING  
CHAPTER 4, ENTITLED “ANIMALS AND FOWL”  
PERTAINING TO THE REGULATION OF DOGS AND  
CATS**

WHEREAS, to protect the public health, safety and welfare, it is the desire of the City Council to modify the Gilroy City Code regarding the regulation of dogs and cats; and

WHEREAS, this Ordinance is exempt from environmental review pursuant to Section 15061(b)(3) of the State Guidelines implementing the California Environmental Quality Act of 1970, as amended.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF GILROY DOES  
HEREBY ORDAIN AS FOLLOWS:**

**SECTION I**

That Gilroy City Code, Chapter 4 [entitled “Animals and Fowl”], Article I entitled [“In General”] Section 4.1, entitled “Definitions” is hereby amended to repeal and replace the definition of “Dangerous dog” to read as follows:

“*Dangerous dog* means a dog which has been classified as dangerous or potentially dangerous at one (1) of three (3) levels based upon specific behavior exhibited or possession of certain characteristics as described in this subsection by the dog. For purposes of this chapter, behaviors or characteristics establishing various levels of dangerousness are as follows:

(1) Level 1 behavior is established if a dog is found to menace, chase, display threatening or aggressive behavior or endanger the safety of any person or domestic animal. A dog exhibiting level 1 behavior is a level 1 dangerous dog within the meaning of this chapter.

(2) Level 2 behavior is established if a dog, while under restraint of a leash, confined or at large, aggressively bites any person or a domestic animal. A dog exhibiting level 2 behavior is a level 2 dangerous dog within the meaning of this chapter.

(3) Level 3 behavior is established if:

a. A dog, whether or not confined, causes the serious injury or death of any person or a domestic animal;

b. A dog engages in or is found to have been trained to engage in exhibitions of fighting, except where the dog’s training has been acquired and fighting done in connection with lawful activities of law enforcement officials; or,

c. A dog that has been classified as a level 2 dangerous dog repeats the behavior covered by paragraph 2 of this subsection after the owner or person with custody receives notice of the level 2 classification. A dog exhibiting level 3 behavior is a level 3 dangerous dog within the meaning of this chapter.

Notwithstanding paragraphs 1 through 3 of this subsection, the administrator shall have discretionary authority to refrain from classifying a dog as dangerous, even if the dog has engaged in the behaviors specified in paragraphs (1) through (3) of this subsection, if the administrator determines that the behavior was a result of the victim abusing or tormenting the dog or other extenuating circumstances. In any case, no dog shall be classified as dangerous if the behavior in question was directed against a trespasser inside any fully enclosed building or fenced area on private property.”

## SECTION II

That Gilroy City Code, Chapter 4 [entitled “ANIMALS AND FOWL”], Article II entitled [“ADMINISTRATION AND ENFORCEMENT”] Section 4.9, entitled “Violation; penalty” is hereby repealed in its entirety and replaced with a new Section 4.9 to read as follows:

### **“Sec. 4.9. Violation; penalty.**

(a) Except as provided for in subsection (e) below, violation of any of the provisions covered in this chapter shall constitute an infraction. Each day a violation continues shall be regarded as a new and separate offense. The punishment upon conviction shall be:

- (1) A fine not exceeding one hundred dollars (\$100.00) for a first violation;
- (2) A fine not exceeding two hundred dollars (\$200.00) for a second violation of the same ordinance within one (1) year; or,
- (3) A fine not exceeding five hundred dollars (\$500.00) for each additional violation of the same ordinance within one (1) year, to a maximum of three (3) such violations.

(b) For purposes of this section, a bail forfeiture shall be deemed to be a conviction of the offense charged.

(c) In addition to any other penalties or fines provided for in this chapter, any reasonable costs incurred by the city in seizing, impounding and for confining any dangerous animal shall be a charge against the owner.

(d) Four (4) or more violations of the same section of this chapter shall constitute a misdemeanor. Each additional day the violations continue unabated shall be regarded as a new and separate offense for which the infraction fines or penalties set forth above shall apply, provided that three (3) additional days of each infraction offense shall constitute an additional misdemeanor. The punishment upon conviction shall be any or all of the following:

- (1) The revocation of any permit issued pursuant to this chapter; or,

(2) A fine not exceeding one thousand dollars (\$1,000.00); or

(3) Imprisonment for a period of not more than six (6) months, or by both such fine and imprisonment.

(e) A person who owns or is in charge of or controls or who possesses a dog who permits, allows or causes the dog to run, stray, be uncontrolled or in any manner be in, upon, or at large upon a public street, sidewalk, park or other public property or in or upon the premises or private property of another person is guilty of a misdemeanor if said dog bites, attacks or causes injury to any human being or other animal.”

### SECTION III

That Gilroy City Code, Chapter 4 [entitled “ANIMALS AND FOWL”], Article III entitled [“ANIMAL RESTRICTIONS”] Section 4.11, entitled “Public nuisances” is hereby repealed in its entirety and replaced with a new Section 4.11 to read as follows:

#### **“Sec. 4.11. Public nuisances.**

(a) It is declared to be a nuisance, and it shall be unlawful, for any person owning or having control or custody of any animal, to do any of the following:

(1) Permit an animal to defecate or urinate on any privately owned or occupied property other than that of the owner or the person having control of the animal;

(2) Permit an animal to defecate on public property without immediately cleaning or removing the excrement to a proper receptacle;

(3) Permit unsanitary conditions to exist on any premises where an animal is kept which would cause foul or obnoxious odors, attract flies or vermin or otherwise threaten the public health and safety;

(4) Cause or permit a dog or a wild or exotic animal to run or wander at-large on any public property or privately owned or occupied premises without the consent of the owner or occupant; or,

a. If an unsterilized dog is determined to be a nuisance pursuant to this section, upon a second offense, the owner will be required to have the dog sterilized.

b. The owner/guardian or person with a right to control a dog that has been determined to be a nuisance a second time must have a microchip inserted into the dog by a licensed veterinarian within twenty (20) days of the designation as a nuisance the second time, for identification purposes. This requirement is at the owner’s expense. The owner/guardian or person with a right to control the dog must provide the administrator with the identifying information listed on the microchip and the information must be noted in the city’s licensing record for that dog.

(5) Permit an animal to engage in menacing behavior including but not limited to the chasing of vehicles or the molesting or frightening of passersby.

(b) Except as provided otherwise in this chapter and except in circumstances in which the animal control officer seeks to have a nuisance abated by the owner of the premises on which the nuisance is generated in accordance with section 4.8, any peace officer may seize and impound any animal causing a public nuisance in accordance with the process set forth in sections 4.50 through 4.59.

(c) In addition to any other remedies provided by this Code, the fine or penalty for violation of this section shall be the amounts specified in section 4.9 of this chapter.

(d) Any private person may maintain an action under Civil Code Section 3493 for enforcement of this chapter declaring certain acts a public nuisance, if such acts are especially injurious to such person.”

#### SECTION IV

That Gilroy City Code, Chapter 4 [entitled “ANIMALS AND FOWL”], Article IV entitled [“DOGS AND CATS”] Section 4.30, entitled “Regulations of dangerous dogs” is hereby repealed in its entirety and replaced with a new Section 4.30 to read as follows:

#### **“Sec. 4.30. Regulations of dangerous dogs.**

(a) The administrator shall determine whether any dog is a dangerous dog as defined in section 4.1.

(1) The making of such determination shall focus on the dog’s behavior or characteristics and shall be based upon an investigation that includes observation of and testimony about the dog’s behavior or characteristic, including the dog’s upbringing and the owner’s control of the dog. These observations and testimony can be provided by animal control officers or by other witnesses who personally observed the animal’s behavior or characteristics. The witnesses shall sign a written statement attesting to this behavior.

(2) The administrator or animal control officer shall give the dog’s owner written notice of the determination by personal service or by posting a notice of the determination on the front door of the residence of the owner or person who has a right to control the animal. The notice shall state, at a minimum, the following: the determination that has been made; the date of notice posting or personal service; that the owner or person with the right to custody or control of the dog has the right to request a hearing on that determination within seventy-two (72) hours of the date of posting or personal service; that failure to request a hearing within the stated seventy-two (72) hours shall be deemed an admission of the determination made; and a brief statement of the types of restrictions that apply to the dog under this chapter once the determination becomes permanent by virtue of the failure of the person served or noticed to request a hearing.

(3) If the owner denies that the behavior in question occurred, the owner may request a hearing before the administrator which shall be conducted in accordance with the

hearing process set forth in section 4.56. The administrator shall determine whether behavior or characteristics specified under section 4.1 were exhibited or possessed by the dog in question.

(4) Once the owner has received notice of the dog's classification as a level 1, 2, or 3 dangerous dog pursuant to subparagraph (2) of this subsection, the owner shall comply with restrictions specified in the notice until such time as the administrator's final decision is issued. Failure to comply with the specified restrictions pending the completion of all appeals shall be a violation of this chapter. Additionally, the administrator shall have authority to impound the dog pending completion of all appeals.

(5) If the administrator finds that a dog has engaged in level 3 behavior, the dog shall be impounded pending completion of all appeals. If the administrator's final decision is that the dog engaged in level 3 behavior, the dog's owner shall be liable for the cost of the dog's impoundment.

(6) The imposition of regulations pursuant to this section shall not prevent the administrator from also issuing a citation pursuant to this chapter.

(7) Upon a conviction for a second violation of any provision of this title, the administrator or animal control officer may order impoundment of the dog.

(b) In addition to any other requirements of this chapter, the owner of a dog that has been determined to be a dangerous dog under the processes provided for in this chapter shall comply with the following:

(1) If the dog has engaged in level 1 behavior or has been designated a level 1 dangerous dog as defined in section 4.1, the dog shall be restrained by a physical device or structure that prevents the dog from reaching any public sidewalk or adjoining property whenever that dog is outside the owner's home and not on a leash under the control of a person at least eighteen (18) years of age and who is physically capable of restraining the animal. The administrator shall adopt administrative rules establishing specifications for the required device or structure. The administrator may require that the dog's owner prove financial responsibility, including posting a bond or certificate of insurance in the amount of three hundred thousand dollars (\$300,000.00). Additionally, the city shall be named as an additional insured on such policy or bond.

(2) If the dog has engaged in level 2 behavior or has been designated a level 2 dangerous dog, the owner or person in control of the dog shall need the following:

a. *Enclosure required.* Owner or person in control shall confine the dog within a building or secured enclosure whenever the dog is not inside the home of the owner or on a leash as described below. Such kennel, pen or structure must have secure sides and a secure top attached thereto. Such enclosure must be constructed in a manner so that it cannot be broken down by any action of the confined dog. All structures used for confinement of such animals must be locked with a key or combination lock of sufficient strength to insure confinement of such animals. Such structures must be erected upon a secure bottom or floor constructed of concrete or other materials sufficient to prevent the animal from digging free. Sides of the structure shall be imbedded not less than two (2) feet into the ground behind a solid

fence not less than six (6) feet in height. The secure enclosure must be located so as not to interfere with the public's legal access to the owner's property.

b. *Off-premises securement.* A level 1 and 2 dog may be permitted off the premises only when it is securely muzzled, and is leashed on a leash not to exceed three (3) feet in length and under the control of a person eighteen (18) years of age or older, and who is physically capable of restraining the animal. The leash must be capable of restraining four (4) times the weight of the animal. The leash must be attached to an escape-proof commercial quality walking harness which fastens securely across the shoulders and midchest encompassing the rib area and upper abdomen of the dog. No collar of any type or material will be sufficient to satisfy the above requirements. Level 2 dangerous dogs shall not be leashed or tethered at any time to inanimate objects such as trees, posts, or buildings. The muzzling device must be constructed so that it is impossible for the dog to remove it without human assistance.

(3) Transportation of level 2 dangerous dogs shall only be in locked animal carriers equivalent in construction quality to those used by commercial air carriers.

(4) No level 2 dangerous dog shall be left unconfined nor unattended in or about any motor vehicle.

(5) Level 2 dangerous dogs enclosed in a house, apartment, building or similar structure shall be allowed only where the windows and doors of the structure are secured to prevent such dog from exiting without the assistance of the owner or person with the right to control such dog.

(6) The administrator may require that the level 2 dangerous dog owner prove financial responsibility including posting a bond or certificate of insurance in the amount of five hundred thousand dollars (\$500,000.00). Additionally the city shall be named as an additional insured on such policy or bond.

a. Any dog that has been determined in accordance with the determination and hearing and appeal processes set forth in this chapter to be a level 3 dangerous dog as defined in section 4.1 shall be euthanized.

b. In addition to the normal licensing fees established by the city council, the administrator is authorized to establish an additional annual fee for dogs that have been classified as a level 1, 2, or 3 dangerous dogs in accordance with section 4.1.

(7) All dogs classified as a Level 1, 2 or 3 dog will be required to have their dog sterilized, at the owner's expense.

(8) The owner/guardian or person with a right to control a dog that has been classified as a Level 1, 2 or 3 dog consistent with sections 4.1 and 4.30, must have a microchip inserted into the dog by a licensed veterinarian within twenty (20) days of the designation as a Level 1, 2 or 3 dog, for identification purposes. This requirement is at the owner's expense. The owner/guardian or person with a right to control the dog must provide the administrator with the identifying information listed on the microchip and the information must be noted in the city's licensing record for that dog.”

## SECTION V

That Gilroy City Code, Chapter 4 [entitled “ANIMALS AND FOWL”], Article IV entitled [“DOGS AND CATS”] Section 4.30 entitled “Regulations of dangerous dogs” is hereby amended by adding new Sections 4.30.1 and 4.30.2 to read as follows:

### **“Sec. 4.30.1. Bites by dangerous dogs – civil damages.**

(a) It is unlawful for any owner/guardian of a dangerous dog or person with a right to control a dangerous dog to allow or permit such dog to bite any person or animal that is lawfully on either private or public property.

(b) For the purpose of this Section, a bite is any cut, laceration, tear, bruise, abrasion, or injury inflicted in or on the epidermis of a person or animal, whether or not that bite is considered a rabies risk by the State of California Health Department.

A civil action for damages against the owner/guardian or a dangerous dog or person with a right to control a dangerous dog which bites any person or animal on either private or public property may be instituted by the human victim of such bite. Damages may include actual damages, costs, attorneys’ fees, and a civil penalty of Five thousand Dollars (\$5,000) in addition thereto. The court also may award punitive damages in a proper case. Nothing in this provision limits any other right or remedy otherwise available in law or equity to any part, nor limits the city’s rights to enforcement under chapter 4.0.

(c) In the case of a bite by a dog, the court, in determining punitive damages, may consider whether the dog was or should have been licensed and properly maintained as a potentially dangerous dog pursuant to chapter 4.0.

(d) This Section does not apply to dog bites inflicted by dogs owned or maintained by the City of Gilroy Police Department and/or its members while such dogs are being used for law enforcement purposes.

## SECTION VI

That Gilroy City Code, Chapter 4 [entitled “ANIMALS AND FOWL”], Article IV entitled [“DOGS AND CATS”] Section 4.31 entitled “Cats; identifying tags” and Section 4.32 entitled “Cats; vaccination” are hereby repealed in their entirety and replaced with new Sections 4.31 and 4.32 to read as follows:

### **“Sec. 4.31. Cats; licensed required.**

(a) No person shall maintain or board any cat four (4) months of age or older which has not been licensed pursuant to the provisions of this chapter, except:

(1) A license shall not be required for any cat owned or under the control of a nonresident of the city, and which is to be kept in the city for less than thirty (30) days.

(2) A license shall not be required for cats temporarily brought into the city for entry into an event, show or exhibition scheduled not more than ten (10) days thereafter.

(b) Compliance with the provisions of this chapter, including the requirement that any cat in the city over four (4) months of age be vaccinated, shall be a condition to the issuance or renewal of any cat license.

(c) Prior to issuance of a cat license, the administrator shall require payment of a license fee which shall be fixed by resolution and which shall not be refundable in whole or in part, with the following exceptions:

(1) A reduced fee shall be charged for licenses issued for spayed females or neutered males. The administrator may require the submission of a certificate of a licensed veterinarian stating that a cat has been spayed or neutered, or cannot be spayed or neutered for health reasons and is incapable of breeding prior to issuance of a license at the lesser fee.

(2) An additional fee shall be fixed to be paid for a license purchased more than sixty (60) days after expiration of a previously issued license or sixty (60) days after notice to the owner to obtain a license.

(d) Cat licenses shall be renewed upon expiration. The term of any cat license issued under this chapter shall commence on the date of the issuance of the license and shall terminate twelve (12) months from the date of issue. When the license is renewed after the expiration date, the new license period shall begin on the expiration date of the previous period.

(e) Upon payment of the cat license fee and the presentation of a valid certificate of vaccination by a duly licensed doctor of veterinary medicine, the administrator shall issue a license stating the name and residence of the person to whom the license is issued, the amount paid, the date of issuance and expiration thereof, the date of expiration of vaccination required under this chapter, and a description of the cat for which such license is issued, together with the number of the metallic tag accompanying the same.

(f) Upon request of any authorized animal control employee or any peace officer, the owner or person having control of a cat shall present the cat's license to that employee or officer.

(g) With each cat license, the administrator shall issue a metal tag bearing an identifying number and the words and letters "Gilroy, CA. Cat Lic." Each cat shall wear the metal tag issued for it at all times except when being shown at a cat show, exhibition or event. The fee for such tag shall be set by resolution.

(h) It shall be unlawful for any person to attach a metal tag issued pursuant to this chapter to any cat other than the cat for which it was issued.

(i) In lieu of a tag and collar, the owner may cause to be implanted in the cat's skin an identifier chip; provided, however, that the owner, in connection with causing such identifier chip to be implanted, shall submit or cause to be submitted to the company which has constructed or maintains the identifier chip all information necessary to enable the administrator

to locate the owner or other responsible person in the event the cat is found astray or in need of medical help.

**Sec. 4.32. Cats; vaccination and proof thereof.**

(a) Every owner of a cat over four (4) months of age shall cause such cat to be vaccinated with an antirabies vaccine approved by the State Department of Public Health. Revaccination shall be made at such intervals of time as may be prescribed by the State Department of Public Health.

(b) Every veterinarian who vaccinates or causes or directs to be vaccinated in the city any cat with antirabies vaccine shall use a form provided by the administrator to certify that such animal has been vaccinated. Every veterinarian shall submit to the licensing authority a copy of the form within ten (10) days of the beginning of each month, for any cat which he/she vaccinates or directs to be vaccinated with antirabies vaccine during the previous month.

(c) The administrator may require an owner to show proof of such vaccination.”

**SECTION VII**

That Gilroy City Code, Chapter 4 [entitled “ANIMALS AND FOWL”], is amended by adding a new Article VII entitled “Mandatory Spaying of Pit Bull Breeds” to read as follows:

**4.33. Findings.**

The city council adopts this Article based upon the following findings:

(a) The Legislature of the State of California approved of breed specific mandatory spaying and neutering by adopting Senate Bill 861 (SB 861), codified at California Food and Agricultural Code Section 31683 and California Health and Safety Code Section 122331.

(b) The intent of SB 861 was to enable local governments to pass ordinances restricting the breeding of specific dog breeds by mandating the spaying and neutering of specific dog breeds.

(c) It is the city council’s intention that nothing in this Article shall be deemed to conflict with state law as contained in the California Food and Agricultural Code and California Health and Safety Code.

(d) It is the city council’s intention that nothing in this Article shall be construed to prevent dog owners in compliance with this section from maintaining intact breeds.

(e) Pit bull breeds and pit bull mixes constitute a majority of unadopted dogs held in animal shelters.

(f) To protect the public health, safety and welfare, it is the desire of the city council to modify the Gilroy City consistent with SB 861, regarding the mandatory spaying and

neutering of pit bull breeds and the permissive maintenance of and breeding of intact pit bull breeds.

(g) Restricting the maintenance of and breeding of intact pit bulls and requiring the spaying and neutering of pit bull breeds will not prevent responsible pet owners and pet breeders from owning, breeding, or showing pit bull breed.

#### **4.34 Purpose and intent.**

(a) It is the purpose and intent of this Article to require the mandatory spaying and neutering of all pit bull breeds whose owners have not obtained a permit to maintain an intact breed.

(b) It is the purpose and intent of this Article to establish a permit system allowing responsible owners to maintain an intact pit bull breed and to breed pit bulls.

#### **4.35 Definitions.**

(a) Whenever the word “Pit Bull” is used in this Article, it shall mean the any dog that is a Bull Terrier, Miniature Bull Terrier, American Pit Bull Terrier, Staffordshire Bull Terrier, American Staffordshire Terrier, or any other dog displaying the physical traits of any one or more of the above breeds, or any dog exhibiting those distinguishing characteristics that conform to the standards established by the American Kennel Club (“AKC”) or United Kennel Club (“UKC”) for any of the above breeds. The AKC and UKC standards for the above breeds are listed on their websites.

(b) Whenever the word “city” is used in this Article, it shall mean the city of Gilroy.

(c) Whenever the word “department” is used in this Article, it shall mean the city of Gilroy animal control services.

(d) Whenever the word “City Code” is used in this Article, it shall mean the city of Gilroy City Code.

#### **4.36 Determination of breed.**

(a) If an owner, guardian or keeper is unsure as to whether or not his or her unspayed and unneutered dog is a pit bull, he or she may make an appointment with department at which a department staff member shall make a determination as to whether or not the dog is a pit bull.

(b) If the dog owner, guardian or keeper wishes to appeal the determination that the dog is a pit bull, within five business days of the staff member’s determination he or she may request a hearing before the department’s director or designee. The hearing shall be held no more than thirty days after the director receives the request. The hearing may be informal and rules of evidence not strictly observed. The decision of the director or designee is final.

#### **4.37 Mandatory spaying and neutering of pit bulls—Exceptions.**

No person may own, keep, or harbor any dog within the city that the person in possession knew, or should have known, was a pit bull that has not been spayed or neutered unless:

- (a) The pit bull is under eight (8) weeks of age.
- (b) The pit bull cannot be spayed or neutered without a high likelihood of suffering serious bodily harm or death due to a physical abnormality. A veterinarian must certify such a condition and determine the time frame after which the pit bull can be spayed/neutered. Within thirty (30) days of the operative date of the ordinance codified in this Article, or within thirty days of, taking possession or ownership of an unspayed or unneutered pit bull, the owner, guardian or keeper must submit such documentation to be verified by the department.
- (c) The pit bull has been present in the city for less than thirty (30) days.
- (d) The owner, guardian or keeper has obtained, or has submitted an application for a breeding permit in accordance with Section 4.41 of this Article.
- (e) Determination of breed is under appeal pursuant to Section 4.36 above.
- (f) The pit bull is a show dog. Within thirty (30) days of the operative date of the ordinance codified in this Article, or within thirty days of taking possession or ownership of an unspayed or unneutered pit bull, the owner, guardian or keeper must submit a copy of the organization papers (AKC or UKC) to the department demonstrating the pedigree information and show dog registration and that the dog conforms with the same breeding permit guidelines set forth in Section 4.41 of this Article below.

#### **4.38 Penalties.**

Violation of Section 4.37 may result in the following penalties:

(a) A first violation may result in the department impounding the pit bull and disposing of the pit bull in accordance with Sections 4.30 and 4.50 of the City Code. A first violation shall be an infraction punishable by a fine as set forth in Section 4.9 of the City Code. In order for the owner, guardian or keeper to reclaim the pit bull from the department, in addition to paying the other charges and fees set out in Section 4.59, one of the following must occur:

1. The department shall have a veterinarian spay or neuter the dog. The dog owner, guardian or keeper shall pay a deposit of one hundred dollars (\$100.00) prior to the procedure and will be charged the fee for such services consisting of the actual expense incurred as established by the department. There may be additional fees for any extraordinary care provided.

2. In the alternative, the owner, guardian or keeper shall arrange for another veterinarian within the city or Santa Clara County to spay or neuter and shall pay the department a fee of sixty dollars (\$60.00), which shall cover the department's costs of delivering the dog to a vet of the owner, guardian or keeper's choosing. The department shall deliver the dog to the vet,

and the vet shall release the dog to the owner, guardian or keeper only after the spaying or neutering is complete.

3. At the discretion of the director, or designee, the director may release the dog to the owner, guardian or keeper provided that the owner, guardian or keeper signs an affidavit that he or she will have the dog spayed or neutered within two (2) weeks and will provide documentation verifying that the spaying or neutering occurred upon completion. If the owner, guardian or keeper fails to have his or her pit bull spayed or neutered as agreed in the affidavit, the department shall have the authority to impound the dog, and the owner, guardian or keeper may be charged with a second violation under subsection B, below.

4. In the event that the director or designee determines that payment of any fees by the owner, guardian or keeper of a pit bull which is impounded or otherwise taken into custody would cause extreme financial difficulty to the owner, guardian or keeper, the director or designee may, at his or her discretion, waive all or part of the fees necessary for compliance with this section.

(b) A second violation of this section by the owner, guardian or keeper, shall be a misdemeanor punishable by imprisonment in the county jail for a period not to exceed six (6) months or by a fine not to exceed one thousand dollars (\$1,000.00), or by both such fine and imprisonment. In addition, a second violation may result in the department impounding the pit bull and disposing of the pit bull in accordance with Sections 4.30 and 4.50 of the City Code.

#### **4.39 Allocation of fees and fines collected.**

All fees and the city's share of all fines collected under Section 4.38 shall be used only by the department to fund the implementation and enforcement of the city's animal control program.

#### **4.40 Requiring permit for the breeding and transferring of pit bull puppies.**

(a) No person shall cause or allow any pit bull, as defined in Section 4.35 of the City Code, which is owned, harbored or kept within the city to breed or give birth without first obtaining a permit as described in this Article.

(b) Keeping an unaltered male adult dog together with a female dog in heat in the same dog run, pen, room, or any other space where the two (2) dogs are allowed contact with one another that would allow the dogs to breed is considered prima facie evidence of an owner, guardian or keeper's intent to allow the dogs to breed.

#### **4.41 Granting or denying a permit.**

(a) An owner or keeper of a pit bull may obtain a nontransferable permit that lasts for one (1) year. If more than one owner, guardian, or keeper is involved in the breeding process, each party must apply for and be granted a breeding permit. The permit may be obtained from the department if all of the following conditions are met:

1. The applicant has submitted the appropriate forms and fees required by the department in order to seek consideration for a breeding permit.

2. The applicant has a space in which to breed pit bulls and raise the puppies that the department is satisfied will contain the animals as well as provide them with safe, sanitary, and humane conditions, appropriate for breeding pit bulls, which satisfies all applicable provisions of this Article of the City Code and all applicable state animal welfare laws.

3. The department has evaluated and reached a positive conclusion regarding the suitability of the particular pit bulls to be bred, including consideration of their lineage, age and health condition. The department shall utilize the following guidelines in making a determination:

a. Owners, guardians or keepers shall provide verification that any pit bull to be bred is registered as a Bull Terrier, Miniature Bull Terrier, American Pit Bull Terrier, Staffordshire Bull Terrier, or American Staffordshire Terrier with the appropriate registry for its breed (American Kennel Club, United Kennel Club, American Dog Breeders Association (“ADBA”) or any other valid registry as determined by the department.

b. Any pit bull to be bred must meet the pit bull breed standard, as defined by the appropriate registration agency (AK, UKC, or ADBA), for physical conformation as well as temperament.

c. The registered pit bull has participated in at least one approved dog show during the previous three hundred sixty-five (365) day period or the owner, guardian or keeper has given written notice to one of the dog registries listed above stating his or her intention that the dog will participate in an approved dog show. A dog show is defined as an event that is sanctioned in writing by one or more of the dog registries listed above.

d. Any pit bull to be bred shall have the appropriate health screenings for its breed. For pit bulls this is, at a minimum, the following health tests: Orthopedic Foundation for Animals (“OFA”) or University of Pennsylvania Hip Improvement Program (“PennHIP”) certification on hips, OFA on heart by a certified cardiologist and must have passed the American Temperament Testing Society temperament test.

4. Breeders shall not allow female pit bulls to have more than one (1) litter per year.

5. Upon approval of his or her application, the applicant must pay the one hundred dollar (\$100.00) permit fee.

(b) The department shall automatically deny the permit if one or more of the following occurs, and that decision shall be final:

1. The applicant fails to pay the permit fee within two (2) weeks of notification that the application has been approved. Applicant may reapply for a permit after ten (10) months.

2. The applicant has a history of allowing dogs to run loose or escape, or has otherwise been found to be neglectful; or has had his or her dog identified as a nuisance.

3. The applicant has violated any provisions of this Article.
4. The applicant has applied for a permit within the last ten (10) months.

(c) The department may on one or more occasions, up to one year after issuing the permit, perform an inspection of the dog's living quarters to ensure that the standards required to receive a permit are met. The department will give the owner, guardian or keeper a twenty-four (24) hour notice and will conduct such inspection at a reasonable time when the owner, guardian or keeper, or his or her representative, is present. The owner, guardian or keeper shall allow the department access to conduct the inspection. If the property does not meet the required standards, or the owner, guardian or keeper cannot be contacted for an inspection within two (2) weeks of the department's initial attempt, or the owner, guardian or keeper fails or refuses to allow an inspection, the department shall not issue a permit.

#### **4.42 Revocation of permit.**

(a) The department may, after conducting a hearing, revoke a breeding permit for violations of the provisions of this Article of the City Code. Within five (5) days of the department's knowledge of any such violations, a hearing officer, who is any designated representative of department or the city police department, shall notice the owner, guardian or keeper of the pit bull in writing that he or she is in violation and subject to penalties under this Article, including revocation of his or her breeding permit. Unless the hearing is waived by the owner, guardian, or keeper of the dog, or the hearing is scheduled on an agreed-upon date, the hearing officer shall fix a time not less than ten (10) or more than thirty (30) days from the date of the violation notice. The hearing officer shall fix a place for said hearing and cause all parties to be notified, not less than five (5) days before the date of such hearing. The hearing may be informal and the rules of evidence not strictly observed. Within fifteen (15) days following the hearing, the hearing officer shall issue his or her decision to all parties. The decision of the hearing officer is final. Upon a finding of a violation, the hearing officer may impose appropriate remedies on the owner, guardian, or keeper. Any violation(s) may also be considered in future permitting decisions.

(b) After the department has issued a permit, it may revoke the permit pursuant to procedures set forth in subsection A of this section if a subsequent inspection of the premises under Section 4.41 (c) reveals the area to be below the standards required for the permit, or if the owner, guardian or keeper cannot be contacted for an inspection within two weeks of the department's initial attempt, or if the owner, guardian or keeper refuses the department access for an inspection. If the dog is already pregnant or the puppies are born, the department may, pending a hearing, impound the pit bull and/or its puppies in accordance with Section 4.50 of the City Code. After a hearing, the department may fine the owner, guardian or keeper an amount not to exceed five hundred dollars, permanently confiscate the puppies and dispose of them in accordance with Section 4.50 of the City Code, and consider the violation in future permitting decisions.

#### **4.43 Transference and sale of pit bull puppies.**

(a) Any owner, guardian or keeper residing in or conducting a transaction within the city who offers any pit bull puppies under six (6) months old for sale, trade, or adoption, must prominently post his or her valid breeding permit number with any offer of sale, trade, or adoption. The permit number must also be supplied in writing to the individual, firm, corporation, or other entity that acquires a puppy.

(b) The breeder shall not remove puppies from the litter until the puppies are at least eight (8) weeks of age, are fully weaned, have their first set of vaccinations, have been dewormed and are in good general health.

(c) Breeders and any party that acquires a pit bull puppy through purchase, trade or adoption shall enter into a written agreement for the transaction and must include language that the acquiring party shall, at any time during the dog's life, return the puppy to the breeder if the acquiring party cannot keep it, and that the breeder shall accept any such returned dog.

(d) Pit bull puppies that do not have show dog papers as defined in Section 4.37 (f) must be spayed or neutered by the breeder prior to transfer.

(e) Within three (3) weeks of the time that the litter is whelped, the breeder shall send to the department a head count of how many puppies were live born. Within three (3) weeks after the breeder transfers physical possession of each puppy, the breeder shall notify the department of the name, address, and telephone number of the new owner, guardian or keeper of each puppy.

#### **4.44 Fines for failure to comply with permit requirements.**

(a) A violation of the breeding permit provisions of this Article shall be an infraction punishable by a fine not to exceed five hundred dollars (\$500.00). Such violations must be corrected within thirty (30) days.

(b) After thirty (30) days of a first citation, if the owner, guardian or keeper fails to correct a violation of this Article, it shall be an additional violation and shall be punishable as a misdemeanor. Subsequent violations will be considered part of a continuous sequence of offenses and each violation after thirty (30) days of a prior conviction will be punishable as a misdemeanor. The punishment shall be imprisonment in the county jail for a period not to exceed six (6) months or by a fine not exceeding one thousand dollars (\$1,000.00), or by both such fine and imprisonment.

(c) Failure to include a prominently posted permit number when transferring pit bull puppies under Section 4.43 (a) shall be an infraction punishable by a one hundred dollar (\$100.00) fine for the first violation, a two hundred dollar (\$200.00) fine upon a second violation within a year of the first offense, and a five hundred dollar (\$500.00) fine upon the third and subsequent violations within a year of the second offense.

(d) Failure to provide the department with the number of puppies born and information about a new owner, guardian or keeper of each puppy in accordance with Section 4.43 (e) shall be an infraction punishable by a one hundred dollar (\$100.00) fine for the first

violation, a two hundred dollar (\$200.00) fine upon a second violation within one year of the first offense, and fine of five hundred dollars (\$500.00) for the third and subsequent violations within one year of the second offense. Failure to provide the department with the new owner, guardian or keeper's information for each puppy, will be considered a separate and individual violation.

**4.45 Allocation of fees and fines collected.**

All fees and the city's share of all fines collected under Section 4.44 shall be used only by the department to fund the implementation and enforcement of the city's animal control program.

**4.46 Exceptions to permit posting requirements.**

The department or a valid 501(0)(3) animal welfare and rescue organization that seeks adoptive homes for pit bulls may transfer ownership and place ads without displaying or supplying a permit number as described in Section 4.43 (a).

**4.47 Operative date.**

Notwithstanding the provisions of Section 4.37, the provisions of this Article mandating the spaying and neutering of pit bulls shall not be operative until the effective date of the ordinance codified in this Article. Notwithstanding the provisions of Sections 4.40 through 4.43, the provisions of this section requiring a permit for the breeding and transfer of pit bull puppies shall not be operative until the effective date of the ordinance codified in this Article.

**SECTION VIII**

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council of the City of Gilroy hereby declares that it would have passed and adopted this Ordinance, and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases may be declared invalid or unconstitutional.

**SECTION IX**

This Ordinance shall be in full force and effect thirty (30) days after its passage and adoption.

[Signatures on next page]

PASSED AND ADOPTED this \_\_ day of March, 2010, by the following vote:

AYES: COUNCILMEMBERS:

NOES: COUCILMEMBERS:

ABSENT: COUNCILMEMBERS:

APPROVED:

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Albert Pinheiro, Mayor

ATTEST:

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Shawna Freels, City Clerk