

2008 FEB 14 09:57 AM CITY OF MADISONVILLE 9363482748 1/14

**CITY OF MADISONVILLE, TEXAS
ORDINANCE NO. 650**

**AN ORDINANCE TO REGULATE THE KEEPING
OF PIT BULL BREED DOGS AND OTHER VICIOUS DOGS
WITHIN THE CITY OF MADISONVILLE, TEXAS**

WHEREAS, the breeds of dogs known as "pit bulls" include any American Pit Bull Terrier, American Staffordshire Terrier, Staffordshire Bull Terrier, or any dog which has the appearance and characteristics of being predominantly of any one or more of the aforementioned breeds; and

WHEREAS, the characteristics selectively bred into or otherwise commonly found in those dogs include:

- (1) A strong fighting instinct, together with a low level of fighting inhibitions which make pit bulls a hazard to humans as well as other animals;
- (2) A strong chase instinct which, experts believe, causes pit bulls to be a danger around running children;
- (3) A tendency to attack even those who exhibit no provocative behavior;
- (4) A diminished tendency to bark, growl, or otherwise warn their prey of an intent to attack;
- (5) A tendency to fight to the death and never quit a fight once engaged, which results in more severe injuries than those inflicted by other breeds;
- (6) The ability to withstand great pain, which makes it difficult for a person or animal to fight off a pit bull attack;
- (7) Powerful jaws capable of hanging on to victims even while the animal withstands infliction of injury or pain;
- (8) A tendency to tear flesh, which has resulted in grotesque injuries to human victims; and
- (9) A combination of agility, stamina, and strength, together with a genetic predisposition to aggressiveness, that makes pit bulls uniquely dangerous, even to their owners, among all breeds of dogs, especially where improperly raised or trained; and

WHEREAS, other municipalities have found that pit bulls are so dangerous to humans and other animals that special legislation restricting or prohibiting their ownership has been enacted; and

WHEREAS, the mere possession of pit bulls poses a significant threat to the health, welfare, and safety of Madisonville citizens; and

WHEREAS, current methods of control by pit bull owners in the city have proven to be insufficient in protecting the public; and

WHEREAS, the Madisonville Mayor and City Council believes it is necessary to prohibit pit bulls, subject to certain exceptions, within the City in order to protect the health, welfare, and safety of citizens of the City of Madisonville; and

WHEREAS, the Madisonville Mayor and City Council has found that the keeping of other breeds of dogs which are vicious or dangerous is a public nuisance and a serious threat to the health, welfare, and safety of citizens of Madisonville.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF MADISONVILLE AS FOLLOWS:

**ARTICLE I.
PIT BULL DOGS**

SECTION 1. **Definitions.** The words, terms, and phrases, and their derivations as used in this ordinance, except where the context clearly indicates otherwise, shall have the following meanings:

- (1) **"Pit bull"** means and includes any of the following dogs:
 - a. The bull terrier breed of dog;
 - b. The Staffordshire bull terrier breed of dog;
 - c. The American pit bull terrier breed of dog;
 - d. The American Staffordshire breed of dog;
 - e. Dogs of mixed breed or of other breeds than above listed which breed or mixed breed is known as pit bull, pit-bull dogs, or pit bull terriers; and
 - f. Any dog which has the appearance and characteristics of being predominantly of the breeds of dogs known as bull terrier, Staffordshire bull terrier, American pit bull terrier, American Staffordshire terrier, and any other breed commonly known as pit bulls, pit bull dogs or pit bull terriers; or a combination of any of these breeds.

- (2) **"Predominately"** means knowledge through identification procedures or otherwise, or admission by owner, keeper, or harbinger that a dog is more than fifty percent (50%) pit bull. Predominately also means that the dog exhibits the physical characteristics of a pit bull more than that of any other breed of dog.

- (3) **"Impoundment"** means the taking or picking up and confining of an animal by any police officer, animal control officer or any other public officer under the provisions of this ordinance.
- (4) **"Muzzle"** means a device constructed of strong, soft material or of metal, designed to fasten over the mouth of an animal to prevent the animal from biting any person or other animal.
- (5) **"Confined"** means to be securely kept indoors, within an automobile or other vehicle, or kept in a securely enclosed and locked pen or structure upon the premises of the owner or keeper of such dog.
- (6) **"Securely enclosed and locked pen or structure"** means a fenced-in area that shall be a minimum of ten (10) feet wide, ten (10) feet long, and six (6) feet in height above grade, and with a horizontal top covering said area, all to be at least nine (9) gauge chain link fencing with necessary steel supporting posts. The floor shall be at least three (3) inches of poured concrete with the bottom edge of the fencing embedded in the concrete or extending at least two (2) feet below grade. The gate must be of the same materials as the fencing, fit securely, and be kept securely locked. The owner shall post the enclosure with a clearly visible warning sign, including a warning symbol to inform children, that there is a dangerous dog on the property. The enclosure shall contain and provide shelter and protection from the elements, adequate exercise room, be adequately lighted and ventilated, and kept in a sanitary condition.
- (7) **"Physical restraint"** means a muzzle and a leash not to exceed four (4) feet in length.
- (8) **"Under restraint"** means that the dog is secured by a leash, led under the control of a person who is at least eighteen (18) years of age and physically capable of restraining the dog, and that the dog is obedient to that person's commands. A dog kept within a securely enclosed and locked pen or structure shall also be considered to be under restraint.
- (9) **"Sanitary condition"** means a condition of good order and cleanliness to minimize the possibility of disease transmission.
- (10) **"Owner"** means any person, partnership, corporation, or other legal entity owning, harboring, or possessing a pit bull or any other dog.

regardless of breed determined to be vicious, or in the case of a person under the age of eighteen (18), that person's parent or legal guardian. Such dog shall be deemed to be harbored if it is fed or sheltered for three (3) or more consecutive days. This definition shall not apply to any veterinary clinic or boarding kennel.

SECTION 2. **Pit bull restrictions.** It shall be unlawful to keep, harbor, own, or in any way possess a pit bull dog within the corporate limits of Madisonville. Provided, however, that persons owning such dogs at the time this ordinance is adopted shall be allowed to keep them, provided that they comply with all of the provisions of this ordinance, including Section 3, within thirty (30) days of the effective date of this ordinance.

SECTION 3. **Standards and requirements for pit bulls.** The following standards and requirements shall apply to pit bull dogs located within the corporate limits of Madisonville:

- (1) Permit required. Each owner, keeper, harborer, or possessor of a pit bull dog shall annually obtain a pit bull permit from the Madisonville City Secretary. Such pit bull permit shall cost thirty dollars (\$30.00) per year and- the pit bull's owner shall make a personal appearance at the Madisonville City Secretary's office when submitting an application for a permit. The thirty dollar (\$30.00) annual permit fee shall be non-refundable and shall be paid prior to any consideration of the permit application or issuance of the permit.
- (2) Physical restraint. No person having charge, custody, control, or possession of a pit bull shall permit the dog to go outside its kennel, pen, or other securely enclosed and locked pen or structure unless such dog is under restraint. No person shall permit a pit bull dog to be kept on a chain, rope, or other type of leash shorter than four (4) feet in length outside its kennel or pen unless such person is of at least eighteen (18) years of age and is in physical control of the leash. Such dogs shall not be leashed to inanimate objects such as trees, posts, buildings, or structures.

- (3) Muzzle. It is unlawful for any owner or keeper of a pit bull to allow the dog to be outside its kennel, pen, or other securely enclosed and locked pen or structure unless it is necessary for the dog to receive veterinary care. In such cases, the dog must wear a properly fitted muzzle sufficient to prevent the dog from biting persons or other animals. Such muzzle shall not interfere with the dog's breathing or vision.
- (4) Outdoor confinement. Except when leashed and muzzled as provided in this Article, all pit bull dogs shall be securely confined as defined in Section 1(6) of this Article. All structures used to confine pit bull dogs must be locked with a key or combination lock when such animals are within the structure. All structures erected to house pit bull dogs must comply with zoning and building ordinances and regulations of the City of Madisonville.
- (5) Indoor confinement. No pit bull dog shall be kept on a porch, patio, or in any part of a dwelling or structure that would allow the dog to exit such building on its own volition. In addition, no such dog may be kept in a dwelling or structure when the windows are open or when screen windows or screen doors are the only obstacles preventing the dog from exiting the structure.
- (6) Signs. All owners, keepers, harborers, or possessors of pit bull dogs shall display in a prominent place on their premises a sign easily readable by the public using the words "Beware of Dog" and including a warning symbol to inform children that there is a dangerous dog on the property. All such signs shall be displayed within twenty-four (24) hours of the issuance of a pit bull permit by the City of Madisonville.
- (7) Insurance. Prior to the issuance of a pit bull permit by the City of Madisonville, all owners, keepers, harborers, or possessors of pit bull dogs shall provide a certificate of insurance to the Madisonville City Secretary as evidence that they have public liability insurance in a single incident amount of one hundred thousand dollars (\$100,000) for bodily injury to or death of any person or persons or for damage to property owned by any persons which may result from owning, possessing, keeping, or maintaining such animal. Such insurance policy shall provide that no cancellation of the policy will be made unless ten (10) days

advance written notice is first given to the Madisonville City Secretary. Failure to maintain such liability insurance or any other lapse in such coverage shall be grounds for the immediate revocation of the pit bull permit issued by the City of Madisonville.

- (8) Identification photographs. Prior to the issuance of a pit bull permit by the City of Madisonville all owners, keepers, possessors, or harborers of pit bull dogs shall provide to the City Secretary two (2) color photographs of the dog clearly showing the color and approximate size of the animal.
- (9) Reporting requirements. All owners, keepers, possessors, or harborers of pit bull dogs shall within ten (10) days of the incident report the following information in writing to the Madisonville City Secretary as required hereinafter:
- a. The removal from the city or death of a pit bull dog.
 - b. The birth of offspring of a pit bull dog.
 - c. The new address of a pit bull dog owner, keeper, possessor, or harborer should such owner, keeper, possessor, or harborer move his residence within the corporate limits of the City of Madisonville.

SECTION 4.

Sale or transfer of ownership prohibited. No person shall sell, barter, or in any other way transfer possession of a pit bull dog to any person within the City of Madisonville unless the recipient person resides permanently in the same household and on the same premises as the owner of such dog; provided that the owner of a pit bull dog may sell or otherwise dispose of a pit bull dog or the offspring of such dog to persons who do not reside within the City of Madisonville.

SECTION 5.

Animals born of registered dogs. All offspring born of pit bull dogs within the City of Madisonville shall be removed from the City of Madisonville within ten (10) weeks of the birth of such animal.

SECTION 6. Rebuttable presumptions. There shall be a rebuttable presumption that any dog registered with the City of Madisonville as a pit bull dog or any of those breeds defined by Section 1(1) of this ordinance is in fact a dog subject to the requirements of this ordinance.

SECTION 7. Impoundment. Any pit bull dog, not kept in compliance with the provisions of this ordinance, may be taken into custody by the appropriate authorities of the City of Madisonville or agents acting on its behalf, and impounded. The dog's owner shall be solely responsible for payment of all boarding fees associated with the impounding of the dog, in addition to any punitive fines to be paid.

SECTION 8. Court proceedings against the owner. If any pit bull dog is impounded, the City of Madisonville may institute proceedings in municipal court charging the owner with violation of this ordinance. Nothing in this section, however, shall be construed as preventing the City or any citizen from instituting a proceeding for violation of this ordinance where there has been no impoundment.

SECTION 9. Court findings. If a complaint has been filed in municipal court against the owner of a dog for violation of this ordinance, the dog shall not be released from impoundment or disposed of except on order of the court and payment of all charges and costs incurred under this ordinance, including penalties for violating this ordinance. The court may, at its discretion, order the dog to be destroyed in a humane manner.

**ARTICLE II.
VICIOUS DOGS**

SECTION 1. Definitions. The definitions included in Article II, Section 1, paragraphs (3) through (10) of this ordinance shall apply to this Article. Additionally, the following words, terms, and phrases, and their derivations as used in this ordinance, except where the context clearly indicates otherwise, shall have the following meanings:

- (1) **"Vicious dog"** means a dog of any breed other than a pit bull which:
- a. Approaches any person in an aggressive, menacing or terrorizing manner or in an apparent attitude of attack if such person is upon any public ways, including streets and sidewalks, or any public or private property; or
 - b. Has a known propensity, tendency, or disposition to attack, inflict injury to or to otherwise endanger the safety of persons or domestic animals; or
 - c. Without provocation, bites or inflicts injury or otherwise attacks or endangers the safety of any person or domestic animal; or
 - d. Is trained for dog fighting or which is owned or kept primarily or in part for the purpose of dog fighting.

SECTION 2. Vicious dogs prohibited. It shall be unlawful for any person to own, keep, harbor, or possess a vicious dog within the corporate limits of the City of Madisonville unless such dog is confined in compliance with this ordinance.

SECTION 3. Procedure for determine that a dog is vicious.

- (1) Upon his own complaint alleging a dog to be vicious, or upon the receipt of such complaint signed by one or more residents of Madisonville, the Madisonville City Secretary or his/her designee shall hold a hearing within five (5) days of serving notice to the dog owner. The purpose of the hearing shall be to determine whether such dog is, in fact, vicious. The dog owner shall be notified by a certified letter of the date, time, place, and purpose of the hearing and may attend and have an opportunity to be heard.
- (2) In making the determination as to whether a dog is vicious, the City Secretary or his designee shall consider, but is not limited to, the following criteria:
- a. Provocation.
 - b. Severity of attack or injury.
 - c. Previous aggressive history of the dog.
 - d. Observable behavior of the dog.

- e. Site and circumstances of the incident giving rise to the complaint.
- f. Age of the victim.
- g. Statements from witnesses and other interested parties.
- h. Reasonable enclosures already in place.
- i. Height and weight of the dog.

(3) Within five (5) days of the hearing, the City Secretary or his designee shall determine whether to declare the dog vicious and shall within five (5) days after such determination notify the dog's owner by certified mail of the dog's designation as a vicious dog and the specific restrictions and conditions for keeping the dog. If the dog is declared vicious, its owner shall confine the dog with a securely enclosed and locked pen or structure, and whenever the dog is removed from such secure enclosure it shall be physically restrained and under restraint as defined in this ordinance. The owner of the vicious dog shall notify residents of all abutting properties, including those across the street, of such findings. This notice to occupants of abutting properties shall be by certified mail, return receipt requested, and shall be at the owner's sole expense. The City Secretary may (a) vary the minimum requirements of a secure enclosure if the owner's residence cannot accommodate a secure enclosure as defined in this ordinance, or (b) permit an alternate method of enclosure provided that, in the sole discretion of the City Secretary, such alternate method fulfills the objectives as a secure enclosure.

- (4) No dog shall be declared vicious if the threat, injury, or damage was sustained by a person who:
- a. was committing a crime or willful trespass or other tort upon the premises occupied by the owner of the dog; or
 - b. was teasing, tormenting, abusing, or provoking the dog; or
 - c. was committing or attempting to commit a crime.

No dog shall be declared vicious as the result of protecting or defending a human being, any other animal, or itself against an unjustified attack or assault.

SECTION 4.

Impoundment of vicious dogs. Any vicious dog, not in compliance with the provisions of this ordinance, may be taken into custody by the appropriate authorities of the City of Madisonville or agents acting on behalf of the City, and impounded. The dog's owner shall be solely responsible for payment of all boarding fees associated with such impoundment in addition to any punitive fines to be paid. No dog which has been declared vicious pursuant to this ordinance shall be released from impoundment unless and until the standards and requirements for keeping vicious dogs, as specified in Article II, Section 5 of this ordinance have been met.

SECTION 5.

Standards and requirements for keeping vicious dogs. The following standards and requirements shall apply to the keeping of vicious dogs located within the corporate limits of Madisonville.

- (1) **Registration.** Within ten (10) days of a dog being declared vicious pursuant to this ordinance, the owner, keeper, harbinger, or possessor of such dog shall register dog with the Madisonville City Secretary.
- (2) **Physical restraint.** No person having charge, custody, control or possession of a vicious dog shall permit the dog to go outside its kennel, pen, or other securely enclosed and locked pen or structure unless such dog is under restraint. No person shall permit a vicious dog to be kept on a chain, rope, or other type of leash outside its kennel or pen unless a person of suitable age and discretion is in physical control of the leash. Such dogs shall not be leashed to inanimate objects such as trees, posts, buildings, or structures.
- (3) **Muzzle.** It is unlawful for any owner or keeper of a vicious dog to allow the dog to be outside its kennel, pen, or other securely enclosed and locked pen or structure unless it is necessary for the dog to receive veterinary care. In such cases, the dog must wear a properly fitted muzzle sufficient to prevent the dog from biting persons or other animals. Such muzzle shall not interfere with the dog's breathing or vision.

- (4) Outdoor confinement. Except when leashed and muzzled as provided in this ordinance, all vicious dogs shall be securely confined as described in Article I, Section 3(4) of this ordinance. All structures used to confine vicious dogs must be locked with a key or combination lock when such animals are within the structure. All outdoor structures erected to house vicious dogs must comply with zoning and building ordinances and regulations of the City of Madisonville and construction of such structures shall be completed within thirty (30) days of the owner's dog being declared vicious.
- (5) Indoor confinement. No vicious dog shall be kept on a porch, patio, or in any part of a dwelling or structure that would allow the dog to exit such building on its own volition. In addition, no such dog may be kept in a dwelling or structure when the windows are open or when screen windows or screen doors are the only obstacles preventing the dog from exiting the structure.
- (6) Signs. All owners, keepers, harborers, or possessors of pit bull dogs shall display in a prominent place on their premises a sign easily readable by the public using the words "Beware of Dog" and including a warning symbol to inform children that there is a dangerous dog on the property. All such signs required by this ordinance shall be installed and in place within fourteen (14) days of an owner's dog being declared vicious.
- (7) Insurance. Within fourteen (14) days of being declared vicious, all owners, keepers, harborers, or possessors of vicious dogs shall provide proof to the City Secretary of public liability insurance in a single incident amount of one hundred thousand dollars (\$100,000) for bodily injury to or death of any person or persons or for damage to property owned by any persons which may result from owning, possessing, keeping, or maintaining such animal. Such insurance policy shall provide that no cancellation of the policy will be made unless ten (10) days advance written notice is first given to the Madisonville City Secretary.

- (8) Identification photographs. Within fourteen (14) days of being declared vicious, all owners, keepers, possessors, or harborers of vicious dogs shall provide to the Madisonville City Secretary two (2) color photographs of the dog clearly showing the color and approximate size of the animal.
- (9) Reporting requirements. All owners, keepers, possessors, or harborers of pit bull dogs shall within ten (10) days of the incident report the following information in writing to the Madisonville City Secretary as required hereinafter:
 - a. The removal from the city or death of a vicious dog.
 - b. The birth of offspring of a vicious dog.
 - c. The new address of a vicious dog owner, keeper, possessor, or harborer should such owner, keeper, possessor, or harborer move his residence within the corporate limits of the City of Madisonville.

SECTION 6. Sale or transfer of ownership prohibited. No person shall sell, barter, or in any other way transfer possession of a vicious dog to any person within the City of Madisonville unless the recipient person resides permanently in the same household and on the same premises as the owner of such dog; provided that the owner of a vicious dog may sell or otherwise dispose of a vicious dog or the offspring of such dog to persons who do not reside within the City of Madisonville.

SECTION 7. Court proceedings against the owner. If any vicious dog is impounded, the City of Madisonville may institute proceedings in municipal court charging the owner with violation of this ordinance. Nothing in this section, however, shall be construed as preventing the City or any citizen from instituting a proceeding for violation of this ordinance where there has been no impoundment.

SECTION 8. Court findings. If a complaint has been filed in municipal court against the owner of a dog for violation of this ordinance, the dog shall not be released from impoundment or disposed of except on order of the court and payment of all charges and costs

incurred under this ordinance, including penalties for violating this ordinance. The court may, upon a finding that the dog is vicious pursuant to this ordinance, order the dog to be destroyed in a humane manner.

SECTION 9.

Guard dogs. It shall be unlawful for any person to place or maintain guard dogs in any area of the City of Madisonville for the protection of persons or property unless the following provisions are met:

- (1) The guard dog shall be confined; or
- (2) The guard dog shall be under the direct and absolute control of a handler at all times when not confined; and
- (3) The owner or other persons in control of the premises upon which a guard dog is maintained shall post warning signs stating that such a dog is on the premises. At least one such sign shall be posted at each driveway or entranceway to said premises. Such signs shall be in lettering clearly visible from either the curb line or a distance of fifty (50) feet, whichever is lesser and shall contain a telephone number where some person responsible for controlling the guard dog can be reached twenty-four (24) hours a day.

ARTICLE III.

PENALTIES, REPEALS, AND SEVERABILITY

SECTION 1.

Penalties. Any person found violating the provisions of Article I or Article II of this ordinance upon conviction shall be fined fifty dollars (\$50.00) and each day of violation shall be deemed a separate violation.

SECTION 2.

Repeals. All ordinances, or parts of ordinances, found to be in conflict with the provisions of this ordinance are hereby repealed to the extent of such inconsistency.

SECTION 3. Severability. Should any court of competent jurisdiction declare any section, clause, or provision of this ordinance to be unconstitutional, such decision shall affect only such section, clause, or provision so declared unconstitutional, and shall not affect the validity of any other section, clause, or provision of this ordinance.

Passed and approved this the 11 day of February, 2008.

Don Dean
Don Dean, Mayor

ATTEST:

Rosa C. Barrera
City Secretary

APPROVED AS TO FORM:

[Signature]
JOHN R. BANKHEAD
City Attorney