

MODEL PIT BULL BAN ORDINANCE

PREDICATE FINDINGS BY THE CITY COUNCIL

WHEREAS, the breeds of dogs known as "pit bulls" include any American Pit Bull Terrier, American Staffordshire Terrier, Staffordshire Bull Terrier, or any dog displaying the majority of physical traits of any one or more of the above breeds, or any dog exhibiting those distinguishing characteristics which substantially conform to the standards established by the American Kennel Club or United Kennel Club for any of the above breeds; and

WHEREAS, the breeds of dogs known as "pit bulls" have been selectively bred for the purpose of bull baiting, bear baiting, and dog fighting for hundreds of years; and

WHEREAS, over the course of the history of "pit bulls", owners and breeders have selectively bred these dogs in order to increase their tendencies to engage in behaviors that are greatly valued in the fighting ring, such as, but not limited to, their ability to initiate in surprise attacks, cause massive damage to their opponent, withstand the infliction of great amounts of pain and force to maintain a tenacious attack for a long period of time, and be willing to fight to the death; and

WHEREAS, owners and breeders have no reasonable and ethical manner to selectively breed "pit bulls" so as to reduce these dangerous behavioral tendencies, and

WHEREAS, animal behavioral experts have verified that "pit bulls" engaged in dog fighting which display aggressive behaviors towards humans are no longer killed, but such behaviors are now continued in breeding lines as the owners have an economic incentive to sell such dogs to irresponsible or unsuspecting individuals, therefore resulting in the leaking of human aggressive "pit bulls" into the general dog population; and

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

- 1) A diminished tendency to bark, growl, or otherwise display behavioral or body language signals that would warn their prey of an intent to immediately attack, resulting in victims being caught by surprise and being placed in a reduced capacity to defend themselves against attack, exposing the victim to an increased risk of having more severe injuries inflicted upon them than those inflicted by other breeds; and
- 2) Once engaged in an attack, a higher tendency to be tenacious and never quitting the attack, with a willingness to fight to the death, which results in more severe injuries than those inflicted by other breeds; and
- 3) The increased tendency to be able to continue with an attack notwithstanding the infliction of great pain, including, but not limited to, being shot or hit with great force, which makes it difficult for a person or animal to fight off a pit bull attack, or for a third party to come to the rescue of the pit bull's victim; and

4) An increased tendency to engage in bite, hold, and tear attack methods, where the pit bull will jump up and bite deeply into its victim's body, holding its bite, and shaking its head back and forth, tearing the flesh, muscle, and blood vessels of the victim, which has resulted in extremely painful, horrific, and grotesque injuries to human victims, described by medical experts as more similar to injuries suffered as a result of shark attacks; and

WHEREAS, a combination of these characteristics listed above have been determined to result in the increased likelihood that should a pit bull attack, there is a higher likelihood of serious bodily injuries or death being inflicted upon its victim, which makes pit bulls uniquely more dangerous, even to their owners, as compared to other breeds of dogs; and

WHEREAS, increasing the exposure of pit bull owners to civil and/or criminal liability, after an attack has occurred, would have little deterrent effect upon those owners who are "irresponsible", as they, by definition, lack of care for consequences and therefore present the greatest risk of engaging in dangerous negligent or reckless management techniques with their pit bulls; and

WHEREAS, this Council determines that a governmental policy designed to accept the occurrence of serious pit bull maulings and to only provide for governmental response after a mauling is not as preferable as a policy that also provides an objectively reliable method to prevent such pit bull attacks and maulings in the first place; and

WHEREAS, other cities across America 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, in 1897 the United States Supreme Court ruled that domesticated pets are considered as *qualified* legal property, and "might be destroyed or otherwise dealt with, as in the judgment of the legislature is necessary for the protection of its citizens"; and

WHEREAS, the State Supreme Courts of New Mexico, Kansas, and Colorado have upheld pit bull restrictions as being constitutional as rationally related to legitimate government interests,

WHEREAS, the area of _____ has experienced numerous recent incidents of violent pit bull attacks; and

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

WHEREAS, the Council believes, after balancing the interests involved, it is necessary to prohibit, subject to certain exceptions with certain restrictions, pit bulls in order to protect human health, welfare and safety within the City of _____,

NOW, THEREFORE, BE IT SO ENACTED BY THE _____:

SECTION 1. Pit bulls prohibited.

(a) It shall be unlawful for any person to own, possess, keep, exercise control over, maintain, harbor, transport, or sell within the city any pit bull.

(b) Definitions.

(1) The "*Director*" is the administrative official with the legal managerial authority over the policies and procedures and day to day operation of the municipal animal care and control agency.

(2) An "*owner*," for purposes of this chapter, is defined as any person who owns, possesses, keeps, exercises control over, maintains, harbors, transports or sells an animal.

(2) A "*pit bull*," for purposes of this chapter, is defined as any dog that is an American Pit Bull Terrier, American Staffordshire Terrier, Staffordshire Bull Terrier, or any dog displaying the majority of physical traits of any one (1) or more of the above breeds, or any dog exhibiting those distinguishing characteristics which substantially conform to the standards established by the American Kennel Club or United Kennel Club for any of the above breeds. The A.K.C. and U.K.C. standards for the above breeds are on file in the office of the City Clerk at City Clerk Filing No. _____.

(3) A "*secure temporary enclosure*," for purposes of this chapter, is a secure enclosure used for purposes of transporting a pit bull and which includes a top and bottom permanently attached to the sides except for a "door" for removal of the pit bull. Such enclosure must be of such material, and such door closed and secured in such a manner, that the pit bull cannot exit the enclosure on its own or have the capacity to bite any person either handling or in close proximity to the enclosure.

(c) Exceptions. The prohibition in subsection (a) of this section shall not apply in the following enumerated circumstances. Failure by the owner to comply and remain in compliance with all of the terms of any applicable exception shall subject the pit bull to immediate impoundment and disposal pursuant to subsection (e) of this section, and shall operate to prevent the owner from asserting such exception as a defense in any prosecution under subsection (a).

(1) The owner of a pit bull, who has applied for and received a dog license for such pit bull from the City in accordance with subsection (d) of this section, on or before the date of publication of the ordinance enacting this section, and who maintains the pit bull at all times in compliance with the pit bull license requirements of subsection (d) of this section and all other applicable requirements of this chapter, may keep the same pit bull within the city.

(2) The City's municipal animal control agency, or their properly authorized agent, may temporarily harbor and transport any pit bull for purposes of enforcing the provisions of this chapter.

(3) Except according to the provisions in paragraph (h), below, any non-profit animal welfare organization lawfully operating an animal shelter in the city may temporarily hold any pit bull that it has received or otherwise recovered,

but only for so long as it takes to contact the City's municipal animal control agency and either turn the pit bull over to the municipal animal control agency employees or receive permission to destroy or have destroyed the pit bull pursuant to the provisions of subsection (e).

(4) A person may temporarily transport into and hold in the city a pit bull only for the purpose of showing such pit bull in a place of public exhibition, contest or show sponsored by a *bona fide* dog club association or similar organization, where sponsor provide sufficient evidence of a valid liability insurance policy for the event, providing \$500,000.00 in liability coverage to the members of the attending public and the City. However, the sponsor of the exhibition, contest, or show must receive written permission from the Director, must obtain any other permits or licenses required by city ordinance, and must provide protective measures adequate to prevent pit bulls from escaping or injuring the public. The person who transports and holds a pit bull for showing shall, at all times when the pit bull is being transported within the city to and from the place of exhibition, contest, or show, keep the pit bull confined in a "secure temporary enclosure" as defined in subdivision (b)(3).

(5) Except as provided in subdivision (4), above, the owner of a pit bull may temporarily transport a pit bull continuously through the city, only if such pit bull is being transported either from a point outside the city directly to a destination outside the city, or between a point outside the city to an airport, train station or bus station within the city. During such Interjurisdictional transportation, the owner may only stop in the city where such stoppage is necessary and solely related to the continuing ability of the owner to continue said transportation, including, but not limited to the refueling or repair of a motor vehicle. The pit bull must be maintained at all times inside a secure temporary enclosure, as defined in subdivision (b)(3), which may include inside of the passenger compartment of a private motor vehicle, with all accessible windows closed.

(d) The owner of any pit bull which had been previously licensed by the City, pursuant to this code on or before the date of publication of the ordinance enacting this section, shall be allowed to keep such pit bull within the city upon compliance with the terms of the exception contained in subdivision (c)(1) of this section only if the owner applies for and receives an annual pit bull permit on or before January 1, 2007¹. As a condition of issuance of a pit bull license, the owner shall at the time of application comply with or otherwise provide sufficient evidence that the owner is in compliance with all of the following regulations:

¹ This deadline date for the owners of pre-existing pit bulls should be determined with consideration of the requirements for the pit bull permit, as well as the capacity to provide sufficient notice of the deadline.

(1) The owner of the pit bull shall provide proof of continuous rabies vaccination, and shall pay the annual pit bull permit fee of two hundred and fifty dollars (\$250.00).²

(2) The owner of the pit bull shall keep current the permit for such pit bull through annual renewal. Such permit is not transferable and shall be renewable only by the holder of the license or by a member of the immediate family of such permittee. A pit bull permit tag will be issued to the owner at the time of issuance of the permit. Such permit tag shall be attached to the pit bull by means of a collar or harness and shall not be attached to any pit bull other than the pit bull for which the permit was issued. If the pit bull tag is lost or destroyed, a duplicate tag may be issued upon the payment of a twenty-dollar fee.

(3) The owner must be at least twenty-one (21) years of age as of January 1, 2007.

(4) The owner shall present to the Director proof that the owner has procured liability insurance in the amount of at least one hundred thousand dollars (\$100,000.00)³, covering any damage or injury which may be caused by a pit bull during the twelve-month period covered by the pit bull permit. The policy shall contain a provision requiring the insurance company to provide written notice to the Director not less than fifteen (15) days prior to any cancellation, termination, or expiration of the policy.

(5) The owner shall, at the owner's own expense, have the pit bull spayed or neutered and shall present to the Director documentary proof from a licensed veterinarian that this sterilization has been performed.

(6) The owner shall bring the pit bull to the municipal animal control agency where a person authorized by the Director shall cause a registration number assigned by the department to be tattooed or otherwise marked on the pit bull. A micro-chip emitting an electronic signal carrying a unique identifying code shall also be subcutaneously implanted in the pit bull. The Director shall maintain a file containing the registration numbers and names of the pit bulls and the names and addresses of the owners. The owner shall notify the Director of any change of address.

(7) At all times when a pit bull is at the property of the owner, the owner shall keep the pit bull "confined." A dog is "confined" as the term is used in this section if such dog is securely confined in the owner's residential structure or confined in a secure outdoor enclosure which meets the following requirements:

(A) The enclosure must have secure sides and a secure top, or all sides must be at least eight (8) feet high;

² The cost of the pit bull permit should take into consideration the actual costs of the implementation and administration of the program, and the inspections of the property at regularly monitored intervals.

³ The amount of coverage required may need to take into consideration the current cost of medical care in the worst case scenario in consultation with the liability insurance industry.

- (B) The enclosure must have a bottom permanently attached to the sides or sides embedded into the ground not less than one (1) foot; and
- (C) The enclosure must be of such material and closed in such a manner that the dog cannot exit the enclosure on its own; and
- (D) The enclosure must be secured against the unauthorized entry by a minor on their own accord; and
- (E) A legible sign, as described in paragraph (d)(10) must be posted and continuously maintained on the enclosure.

This section does not relieve the owner, possessor or keeper of a dog from the obligation to comply with any section of the municipal zoning code or building code concerning requirements for the placement or construction of fences or dog kennels.

(8) At all times when the pit bull is away from the property of the owner, the owner shall keep the pit bull either securely leashed and muzzled or in a "secure temporary enclosure," as that term is defined in subdivision (b)(3) of this section.

(9) The owner shall not sell or otherwise transfer the pit bull to any person except a member of the owner's immediate family who will then become the owner and will be subject to all of the provisions of this section. The owner shall notify the City within five (5) days in the event that the pit bull is lost, stolen, dies, or has a litter. In the event of a litter, the owner must deliver the puppies to the municipal animal control agency for destruction or permanently remove the puppies from the city and provide sufficient evidence of such removal by the time the puppies are weaned, but in no event shall the owner be allowed to keep in the city a pit bull puppy born after the date of publication of the ordinance, that is more than eight (8) weeks old. Any pit bull puppies kept contrary to the provisions of this subdivision are subject to immediate impoundment and disposal pursuant to subsection (e) of this section.

(10) The owner shall post a conspicuous and clearly legible sign at each possible entrance to the owner's property where the pit bull is kept. Such sign must be rectangular with dimensions of at least one foot (12 inches) in height by two feet (24 inches), with lettering of not less than two (2) inches in height and proportional width that shall read as follows: "WARNING: PIT BULL DOG". The Director shall approve a standardized sign format, color, text, and images/ or cons that shall be used by all pit bull permittees.

(e) The Director is authorized to immediately impound any pit bull found in the city which is not licensed under subsection (d), above, and does not fall within the exceptions listed in subsection (c), above. The municipal animal control agency may house or dispose of such pit bull in such manner as the Director may deem appropriate, except as the procedures in subsection (g), below, otherwise require.

(f) When the Director has impounded any pit bull dog pursuant to this section, and the owner of such dog disputes the classification of such dog as a pit bull, the owner of such dog may file a written petition with the Director for a hearing concerning such classification no later than seven (7) days after impoundment. Such petition shall include the name and address, including mailing address, of the petitioner. The Director will then issue a notice of hearing date by mailing a copy to the petitioner's address no later than ten (10) days prior to the date of the hearing. Where no written request from the owner for a hearing is received by the Director within seven (7) days of impoundment, the pit bull shall be destroyed. The hearing, if any, will be held before the Director or a hearing officer designated by the Director. Any facts which the petitioners wishes to be considered shall be submitted under oath or affirmation either in writing or orally at the hearing. The Director or hearing officer shall make a final determination whether the dog is a pit bull as defined in subsection (b)(2) of this section. Such final determination shall be considered a final order of the Director subject to judicial review pursuant to the applicable rules of legal procedure. The procedures in this subsection (f) shall not apply and the owner is not entitled to such a hearing with respect to any dog which was impounded as the immediate result of an attack or bite as defined in this code. In those instances, the dog shall be handled and the procedures governed by the provisions for dogs involved in a bite or attack.

(g) If the dog is found not to be a pit bull, the dog shall be released to the owner. If the dog is found to be a pit bull, it shall be humanely destroyed, unless the owner voluntarily comes forward within seven (7) days after the impoundment and the following conditions are met to the satisfaction of the Director:

(1) The owner voluntarily executes a waiver to an administrative hearing on the classification of the dog as a pit bull, pursuant to subsection (f) above.

(2) The owner produces credible evidence that the pit bull is to be permanently taken out of the city, maintained at a specified lawful location, and the pit bull will not return to the city illegally.

(3) Where the owner or their immediate family has committed a prior violation of this section, or the pit bull had been previously impounded and released pursuant to this subsection, the following provisions shall apply:

(i) The owner shall pay a non-refundable payment of \$250.00 for the costs of the administrative review of this matter; and

(ii) The owner shall submit their petition in writing only, and any factual claims shall be supported by sworn affidavits of witnesses.

(iii) The pit bull may be released only where the owner is able to prove by clear and convincing evidence that the presence of the pit bull was either legal, due to circumstances that amount to a lawful exemption as listed in subsection (b) above, or the pit bull's presence in the city was not due to a voluntary act or the failure of the owner to take reasonable

efforts to prevent the violation, such as the fact the pit bull was stolen or taken without legal authority by a known party.

(iv) The negligence or recklessness of the owner or the owner's agent, in causing or allowing the violation of this section, will not amount to sufficient cause for the pit bull's release.

(4) A registration number assigned by the municipal animal control agency shall be tattooed or otherwise marked on the pit bull. A micro-chip emitting an electronic signal carrying a unique identifying code shall also be subcutaneously implanted in the pit bull.

(5) The owner and any proposed transferee of ownership and possession acknowledge that should the pit bull be found within the city in the future, in violation of this section, the pit bull will be destroyed; and

(6) The pit bull is spayed or neutered before its release, unless a licensed veterinarian states in writing that a pit bull is unfit to undergo the required surgical procedure because of an extreme health condition of the animal. Such extreme health condition shall include, but not be limited to: severe cardiovascular compromise, bleeding disorder, respiratory disease and hepatic disease. The old age of an animal shall not, of itself, constitute an extreme health condition for purposes of this section. The Director may authorize the secured transportation of the pit bull to a licensed veterinarian to perform this procedure, if necessary; and

(7) The pit bull has no known history of behavioral problems and does not display any problematic behavioral traits so as to warrant the Director's confidence that the pit bull will not pose a danger or nuisance to the public's health, safety, or welfare; and

(8) The owner pays all the costs of impoundment, tattooing, micro-chipping, transportation, and all associated veterinarian costs, including sterilization.