

ORDINANCE 2011-08

AN ORDINANCE AMENDING PART 2, DOG OFFENSES, OF CHAPTER VIII OF THE CITY CODE OF THE CITY OF RUSH CITY, AND ADOPTING FEES

The City Council of the City of Rush City hereby ordains:

That Part 2, of Chapter VIII, Nuisance and Offenses, of the City Code related to Dog Offenses is hereby vacated and amended in its entirety to read as follows:

CHAPTER VIII. NUISANCE AND OFFENSES

Part 2. Animal Control

802.01 Definitions. For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

- (A) *Animal* means any mammal, reptile, amphibian, fish, bird (including all fowl and poultry) or other member commonly accepted as a part of the animal kingdom. *Animals* shall be classified as follows:
- (1) *Domestic animals* means those animals commonly accepted as domesticated household pets. Unless otherwise defined, *domestic animals* shall include dogs, cats, caged birds, gerbils, hamsters, guinea pigs, domesticated rabbits, fish, non-poisonous, non-venomous and non-constricting reptiles or amphibians and other similar animals;
 - (2) *Farm animals* are those animals commonly associated with a farm or performing work in an agricultural setting. Unless otherwise defined, *farm animals* shall include members of the equestrian family (horses, mules), bovine family (cows, bulls), sheep, poultry (chickens, turkeys), fowl (ducks, geese), swine (including Vietnamese pot-bellied pigs), goats, bees and other animals associated with a farm, ranch or stable;
 - (3) *Nondomestic animals* means those animals commonly considered to be naturally wild and not naturally trained or domesticated or which are commonly considered to be inherently dangerous to the health, safety and welfare of people. Unless otherwise defined, *nondomestic animals* shall include:
 - (a) Any member of the large cat family (family Felidae), including lions, tigers, cougars, bobcats, leopards and jaguars, but excluding commonly accepted domesticated house cats;
 - (b) Any naturally wild member of the canine family (family Canidae), including wolves, foxes, coyotes, dingos and jackals, but excluding

- commonly accepted domesticated dogs;
 - (c) Any crossbreeds such as the crossbreed between a wolf and a dog, unless the crossbreed is commonly accepted as a domesticated house pet;
 - (d) Any member or relative of the rodent family, including any skunk (whether or not descended), raccoon, squirrel or ferret, but excluding those members otherwise defined or commonly accepted as domesticated pets;
 - (e) Any poisonous, venomous, constricting or inherently dangerous member of the reptile or amphibian families, including rattlesnakes, boa constrictors, pit vipers, crocodiles and alligators;
 - (f) Any other animal which is not explicitly listed above but which can be reasonably defined by the terms of this section, including but not limited to bears, deer, monkeys and game fish.
- (B) *At large* means off the premises of the owner and not under the custody and control of the owner or other person, either by leash, cord, chain or otherwise restrained or confined.
- (C) *Cat* means both the male and female of the Felidae species commonly accepted as domesticated household pets.
- (D) *Dog* means both the male and female of the canine species, commonly accepted as domesticated household pets and other domesticated animals of a dog kind.
- (E) *Owner* means any person or persons, firm, association or corporation owning, keeping or harboring an animal.

802.02 Dogs and Cats.

- (A) Running at large prohibited. It shall be unlawful for the dog or cat of any person who owns, harbors or keeps a dog or cat to run at large. A person who owns, harbors or keeps a dog or cat which runs at large shall be guilty of a misdemeanor. Dogs or cats on a leash and accompanied by a responsible person or accompanied by and under the control and direction of a responsible person so as to be effectively restrained by command as by leash shall be permitted in streets or on public land unless the city has posted an area with signs reading "Dogs or Cats Prohibited."
- (B) License required.
- (1) All dogs or cats over the age of six months kept, harbored or maintained by their owners in the city shall be licensed and registered with the city. Dog or cat licenses shall be issued by the City Administrator upon payment of the license fee as established from time to time by ordinance of the Council. The owner shall state, at the time application is made for the license and upon forms provided, his or her name and address and the name, breed, color and sex of each dog or cat owned or kept by him or her. Licenses shall be good for the life of the dog or

cat.

- (2) It shall be the duty of each owner of a dog or cat subject to this section to pay to the City Administrator the one-time license fee established from time to time by ordinance of the Council.
 - (3) Upon payment of the license fee as established from time to time by ordinance of the Council, the Administrator shall issue to the owner a license certificate and metallic tag for each dog or cat licensed. The tag shall have stamped on it the year for which it is issued and the number corresponding with the number on the certificate. Every owner shall be required to provide each dog or cat with a collar to which the license tag must be affixed and shall see that the collar and tag are constantly worn. In case a dog or cat tag is lost or destroyed, a replacement shall be issued by the City Administrator. A charge shall be made for each replacement tag in an amount established from time to time by ordinance of the Council. Dog or cat tags shall not be transferable from one dog or cat to another, and no refunds shall be made on any dog or cat license fee or tag because of death of a dog or cat or the owner's leaving the city.
 - (4) The licensing provisions of this division (B) shall not apply to dogs or cats whose owners are nonresidents living within the city for less than six months, nor to dogs or cats brought into the city for the purpose of participating in any dog or cat show, nor shall this provision apply to "seeing eye" dogs properly trained to assist blind persons for the purpose of aiding them in going from place to place.
 - (5) The funds received by the City Administrator from all dog or cat licenses and metallic tags fees, as established from time to time by ordinance of the Council, shall first be used to defray any costs incidental to the enforcement of this chapter, including, but not restricted to, the costs of licenses, metallic tags and impounding and maintenance of the dogs or cats.
- (C) Cats. Cats shall be included as controlled by this section insofar as running at large, pickup, impounding, boarding, and licensing is concerned. All other provisions of this section shall also apply to cats unless otherwise provided.

802.03 Nondomestic Animals. It shall be illegal for any person to own, possess, harbor or offer for sale any nondomestic animal within the city. Any owner of a nondomestic animal at the time of adoption of this code shall have 30 days in which to remove the animal from the city, after which time the city may impound the animal as provided for in this chapter. An exception shall be made to this prohibition for animals specifically trained for and actually providing assistance to the handicapped or disabled and for those animals brought into the city as part of an operating zoo, veterinarian clinic, scientific research laboratory or a licensed show or exhibition.

802.04 Farm Animals. Farm animals shall only be kept in an agricultural district of the city. An exception shall be made to this section for those animals brought into the city as part of an operating zoo, veterinarian clinic, scientific research laboratory or a licensed show or exhibition.

802.05 Impounding.

- (A) Running at large. Any animal running at large is hereby declared a public nuisance. Any Animal Control Officer or peace officer may impound any dog or other animal found unlicensed or any animal found running at large and shall give notice of the impounding to the owner of the dog or other animal, if known. In case the owner is unknown, the officer shall post notice of impoundment at the city office indicating that if the dog or other animal is not claimed within the time specified in division (C) of this section, such dog or animal will be relocated or otherwise disposed of. Except as otherwise provided in this section, it shall be unlawful to kill, destroy or otherwise cause injury to any animal, including dogs and cats running at large. Notwithstanding the provisions of this section, if an animal is found unrestrained and its owner can be identified and located, such animal need not be impounded but may, instead, be take to the owner. In such cases, however, a reclaiming fee as set by ordinance shall be paid at the time the animal is released to its owner's custody and proceedings may be taken against the owner for violation of this ordinance.
- (B) Biting animals. Any animal that has not been inoculated by a live modified rabies vaccine and which has bitten any person, causing the skin of the person to be punctured or the services of a doctor are required, shall be confined in the city pound for a period of not less than ten days, at the expense of the owner. The animal may be released at the end of the time if healthy and free from symptoms of rabies and by the payment of all costs associated with the confinement by the owner. However, if the owner of the animal shall elect immediately upon receipt of notice of need for the confinement by the officer to voluntarily and immediately confine the animal for the required period of time in a veterinary hospital of the owner's choosing, and provide immediate proof of confinement in the manner as may be required, the owner may do so. If, however, the animal has been inoculated with a live modified rabies vaccine and the owner has proof of the vaccination by a certificate from a licensed veterinarian, the owner may confine the dog or other animal to the owner's property.
- (C) Reclaiming. All animals conveyed to the pound shall be kept, with humane treatment and sufficient food and water for their comfort, at least five regular business days, unless the animal is a dangerous animal as defined under § 802.11, in which case it shall be kept for seven regular business days or the times specified in § 802.11; provided, however, if the animal is a cruelly-treated animal, it shall be kept for ten regular business days, unless sooner reclaimed by the animal's owner or keeper as provided by this section. In case the owner or keeper shall desire to reclaim the animal from the pound, the following shall be required, unless otherwise provided for in this code or established from time to time by ordinance of the City

Council:

- (1) Payment of the release fee and receipt of a release permit as established from time to time by ordinance of the Council;
 - (2) Payment of maintenance costs, as provided by the pound, per day or any part of the day while the animal is in the pound; and
 - (3) If a dog or cat is unlicensed, payment of a regular license fee as established from time to time by ordinance of the Council and valid certificate of vaccination for rabies and distemper shots is required. If no certificate of vaccination is given, one is required to be produced within 14 days of release. A proof of vaccination deposit fee as established from time to time by ordinance of the Council will be required and held until the certificate of vaccination is produced.
- (D) Unclaimed animals. At the expiration of the times established in division (C) of this section, if the animal has not been reclaimed in accordance with the provisions of this section, the officer appointed to enforce this section may let any person claim the animal by complying with all provisions in this section or the officer may take the animal to a shelter or humane society, if placement is available, or cause the animal to be destroyed in a proper and humane manner and shall properly dispose of the remains thereof. Any money collected under this section shall be payable to the City Administrator.

802.06 Kennels.

- (A) Definition of kennel. The keeping of any combination of more than three dogs and/or cats on the same premises, whether or not owned by the same person and for whatever purpose kept, shall constitute a "kennel;" provided, however, that a fresh litter of puppies or kittens may be kept for a period of three months before that keeping shall be deemed to be a "kennel."
- (B) Kennel as a nuisance. Because the keeping of any combination of more than three dogs and/or cats on the same premises is subject to great abuse, causing discomfort to persons in the area by way of smell, noise, hazard and general aesthetic depreciation, the keeping of more than three dogs or cats on the premises is hereby declared to be a nuisance, and no person shall keep or maintain a kennel within the city except as may be provided under the city zoning code.

802.07 Nuisances.

- (A) Habitual barking. It shall be unlawful for any person to keep or harbor a dog which habitually barks or cries. Habitual barking shall be defined as barking for repeated intervals of at least five minutes with less than one minute of interruption. The

barking must also be audible off of the owner's or caretaker's premises.

- (B) Damage to property. It shall be unlawful for any person's dog or other animal to damage any lawn, garden or other property, whether or not the owner has knowledge of the damage.
- (C) Cleaning up litter. The owner of any animal or person having the custody or control of any animal shall be responsible for cleaning up any feces of the animal and disposing of the feces in a sanitary manner, whether on their own property, on the property of others or on public property.
- (D) Other. Any animals kept contrary to this section are subject to impoundment as provided in §802.05.

802.08 Seizure of Animals. Any peace officer or Animal Control Officer may enter upon private property and seize any animal, provided that the following exist:

- (A) There is an identified complainant other than the peace officer or Animal Control Officer making a contemporaneous complaint about the animal;
- (B) The officer reasonably believes that the animal meets either the barking dog criteria set out in § 802.07, the criteria for cruelty set out in § 802.13, or the criteria for an at large animal set out in §802.05(A);
- (C) The officer can demonstrate that there has been at least one of the following: a previous complaint of a barking dog involving the same animal subject to the current complaint ; a previous violation by the owner of inhumane treatment of the animal; or that the same animal was at large on a prior date;
- (D) The officer has made a reasonable attempt to contact the owner of the dog and the owner of the property to be entered, and those attempts have either failed or have been ignored;
- (E) The seizure will not involve the forced entry into a private residence. Use of a pass key obtained from a property manager, landlord, innkeeper or other authorized person to have that key shall not be considered unauthorized entry; and
- (F) Written notice of the seizure is left in a conspicuous place if personal contact with the owner of the dog is not possible.

802.09 Animals Presenting a Danger to Health and Safety of City. If, in the reasonable belief of the Animal Control Officer or peace officer, an animal presents an immediate danger to the health and safety of any person, the animal is threatening imminent harm to any person or the animal is in the process of attacking any person, the officer may destroy the animal in a proper and humane manner. Otherwise, the officer may apprehend the animal and deliver it to the pound for confinement under §802.05. If the animal is ultimately destroyed as provided in this

chapter, the owner or keeper of the animal destroyed shall be liable to the city for the cost of maintaining and disposing of the animal, plus the costs of any veterinarian examination. If the animal is found not to be a danger to the health and safety of the city, it may be released to the owner or keeper in accordance with §802.05(C).

802.10 Diseased Animals.

- (A) Running at large. No person shall keep or allow to be kept on his or her premises or on premises occupied by them, nor permit to run at large in the city, any animal which is diseased so as to be a danger to the health and safety of the city, even though the animal is properly licensed under this section.
- (B) Confinement. Any animal reasonably suspected of being diseased and presenting a threat to the health and safety of the public may be apprehended and confined in the pound by the Animal Control Officer or a peace officer. The officer shall have a qualified veterinarian examine the animal. If the animal is found to be diseased in a manner so as to be a danger to the health and safety of the city, the officer shall cause the animal to be painlessly killed and shall properly dispose of the remains. The owner or keeper of the animal killed under this section shall be liable to the city for the cost of maintaining and disposing of the animal, plus the costs of any veterinarian examinations.
- (C) Release. If the animal, upon examination, is not found to be diseased, the animal shall be released to the owner or keeper free of charge.

802.11 Dangerous Animals.

- (A) Attack by an animal. It shall be unlawful for any person's animal to inflict or attempt to inflict bodily injury to any person or other animal, whether or not the owner is present. This section shall not apply to an attack by a dog under the control of a law enforcement officer or to an attack upon an uninvited intruder who has entered the owner's home with criminal intent.
- (B) Destruction of dangerous animal. The Animal Control Officer shall have the authority to order the destruction of dangerous animals in accordance with the terms established by this chapter.
- (C) Definitions. For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.
 - (1) *Dangerous animal* means an animal which has:
 - (a) without provocation, inflicts substantial bodily harm on a human being on public or private property;
 - (b) killed a domestic animal without provocation while off the owner's

property; or

- (c) been found to be potentially dangerous and after the owner has notice that the dog is potentially dangerous, the dog aggressively bites, attacks, or endangers the safety of humans or domestic animals.

(2) *Potentially dangerous animal* means any animal that:

- (a) when unprovoked, inflicts bites on a human or domestic animal on public or private property; or
- (b) when unprovoked, chases or approaches a person, including a person on a bicycle, upon the streets, sidewalks, or any public or private property, other than the animal owner's property, in an apparent attitude of attack; or
- (c) has a known propensity, tendency, or disposition to attack unprovoked, causing injury or otherwise threatening the safety of humans or domestic animals.

(3) *Proper enclosure* means securely confined indoors or in a securely locked pen or structure suitable to prevent the animal from escaping and to provide protection for the animal from the elements. A proper enclosure does not include a porch, patio or any part of a house, garage or other structure that would allow the animal to exit of its own volition or any house or structure in which windows are open or in which door or window screens are the only barriers which prevent the animal from exiting. The enclosure shall not allow the egress of the animal in any manner without human assistance. A pen or kennel shall meet the following minimum specifications:

- (a) Have a minimum overall floor size of 32 square feet;
- (b) Side walls shall have a minimum height of five feet and be constructed of 11-gauge or heavier wire. Openings in the wire shall not exceed 2 inches, support posts shall be 1-inch or larger steel pipe buried in the ground 18 inches or more. When a concrete floor is not provided, the side walls shall be buried a minimum of 18 inches in the ground;
- (c) A cover over the entire pen or kennel shall be provided. The cover shall be constructed of the same gauge wire or heavier as the side walls and shall also have no openings in the wire greater than two inches;
- (d) An entrance/exit gate shall be provided and be constructed of the same material as the side walls and shall also have no openings in the wire greater than two inches. The gate shall be equipped with a device

capable of being locked and shall be locked at all times when the animal is in the pen or kennel.

(4) *Unprovoked* means the condition in which the animal is not purposely excited, stimulated, agitated or disturbed.

(D) Designation as potentially dangerous animal. The Animal Control Officer shall designate any animal as a potentially dangerous animal upon receiving evidence that the potentially dangerous animal has, when unprovoked, then bitten, attacked or threatened the safety of a person or a domestic animal as stated in division (C)(2). When an animal is declared potentially dangerous, the Animal Control Officer shall cause one owner of the potentially dangerous animal to be notified in writing that the animal is potentially dangerous.

The owner of a dangerous or potentially dangerous animal must have a microchip implanted in the animal for identification, and the name of the microchip manufacturer and identification number of the microchip must be provided to the animal control authority. If the microchip is not implanted by the owner, it may be implanted by the animal control authority. In either case, all costs related to purchase and implantation of the microchip must be borne by the animal's owner.

(E) Evidence justifying designation. The Animal Control Officer shall have the authority to designate any animal as a dangerous animal upon receiving evidence of the following:

(1) That the animal is a dangerous animal as defined in section (C)(1);

(2) That the animal has been declared potentially dangerous and the animal has then acted in a manner described in division (C)(1).

(F) Authority to order destruction. The Animal Control Officer, upon finding that an animal is dangerous hereunder, is authorized to order, as part of the disposition of the case, that the animal be destroyed based on a written order containing the following findings of fact:

(1) The animal is dangerous as defined in division (C)(1) of this section; or

(G) Procedure. The Animal Control Officer, after having determined that an animal is dangerous, may proceed in the following manner: the Animal Control Officer shall cause one owner of the animal to be notified in writing or in person that the animal is dangerous and may order the animal seized or make orders as deemed proper. This owner shall be notified as to dates, times, places and parties bitten and shall be given 14 days to appeal this order by requesting a hearing before the City Council for a review of this determination.

(1) If no appeal is filed, the orders issued will stand or the Animal Control Officer

may order the animal destroyed.

- (2) If an owner requests a hearing for determination as to the dangerous nature of the animal, the hearing shall be held before the City Council, which shall set a date for hearing not more than three weeks after demand for the hearing. The records of the Animal Control or City Administrator's office shall be admissible for consideration by the Animal Control Officer without further foundation. After considering all evidence pertaining to the temperament of the animal, the City Council shall make an order as it deems proper. The City Council may order that the Animal Control Officer take the animal into custody for destruction, if the animal is not currently in custody. If the animal is ordered into custody for destruction, the owner shall immediately make the animal available to the Animal Control Officer.
 - (3) No person shall harbor an animal after it has been found by to be dangerous and ordered into custody for destruction.
- (H) Stopping an attack. If any peace officer or Animal Control Officer is witness to an attack by an animal upon a person or another animal, the officer may take whatever means the officer deems appropriate to bring the attack to an end and prevent further injury to the victim.
- (I) Notification of new address. The owner of an animal which has been identified as dangerous or potentially dangerous shall notify the Animal Control Officer in writing if the animal is to be relocated from its current address or given or sold to another person. The notification shall be given in writing at least 14 days prior to the relocation or transfer of ownership. The notification shall include the current owner's name and address, the relocation address and the name of the new owner,

if any.

802.12 Dangerous Animal Requirements.

- (A) Requirements. If the City Council does not order the destruction of an animal that has been declared dangerous, the City Council may, as an alternative, order any or all of the following:
- (1) That the owner provide and maintain a proper enclosure for the dangerous animal as specified in §802.11(C)(3);
 - (2) Post the front and the rear of the premises with clearly visible warning signs, including a warning symbol to inform children that there is a dangerous animal on the property as specified in M.S. §347.51, as may be amended from time to time;
 - (3) Provide and show proof annually of public liability insurance in the minimum amount of \$300,000.00;

- (4) If the animal is a dog and is outside the proper enclosure, the dog must be muzzled and restrained by a substantial chain or leash (not to exceed six feet in length) and under the physical restraint of a person 16 years of age or older. The muzzle must be of a design as to prevent the dog from biting any person or animal, but will not cause injury to the dog or interfere with its vision or respiration;
 - (5) If the animal is a dog, it must have an easily identifiable, standardized tag identifying the dog as dangerous affixed to its collar at all times as specified in M.S. §347.51, as amended from time to time;
 - (6) All animals deemed dangerous by the Animal Control Officer shall be registered with the county in which this city is located within 14 days after the date the animal was so deemed and provide satisfactory proof thereof to the Animal Control Officer;
- (B) Seizure. The Animal Control Officer shall immediately seize any dangerous animal if the owner does not meet each of the above requirements within 14 days after the date notice is sent to the owner that the animal is dangerous. Seizure may be appealed to District Court by serving a summons and petition upon the city and filing it with the District Court.
- (C) Reclaiming animals. A dangerous animal seized under § 802.12(B) may be reclaimed by the owner of the animal upon payment of impounding and boarding fees and presenting proof to animal control that each of the requirements under § 802.12(A) is fulfilled. An animal not reclaimed under this section within 14 days may be disposed of as provided under §802.11(F), and the owner is liable to the city for costs incurred in confining and impounding the animal.
- (D) Subsequent offenses. If an owner of an animal has subsequently violated the provisions under §802.11 with the same animal, the animal must be seized by animal control. The owner may request a hearing as defined in § 802.11 (G). If the owner is found to have violated the provisions for which the animal was seized, the Animal Control Officer shall order the animal destroyed in a proper and humane manner, and the owner shall pay the costs of confining the animal. If the person is found not to have violated the provisions for which the animal was seized, the owner may reclaim the animal under the provisions of division (C) of this section. If the animal is not yet reclaimed by the owner within 14 days after the date the owner is notified that the animal may be reclaimed, the animal may be disposed of as provided under §802.11 (F), and the owner is liable to the animal control for the costs incurred in confining, impounding and disposing of the animal.

802.13 Basic Care. All animals shall receive from their owners or keepers kind treatment, housing in the winter and sufficient food and water for their comfort. Any person not treating his or her pet in a humane manner will be subject to the penalties provided in this chapter.

802.14 Breeding Moratorium. Every female dog or female cat in heat shall be confined in a building or other enclosure in a manner that it cannot come in contact with another dog or cat, except for planned breeding. Upon capture and failure to reclaim the animal, every dog or cat shall be neutered or spayed prior to being transferred to a new owner.

802.15 Enforcing Officer. The Council is hereby authorized to appoint an animal control officer(s) to enforce the provisions of this section. In the officer's duty of enforcing the provisions of this chapter, he or she may from time to time, with the consent of the City Council, designate assistants.

802.16 Pound. The Council shall designate an official pound to which animals found in violation of this chapter shall be taken for safe treatment and, if necessary, for destruction.

802.17 Interference With Officers. No person shall in any manner molest, hinder or interfere with any person authorized by the City Council to capture dogs, cats or other animals and convey them to the pound while engaged in that operation; nor shall any unauthorized person break open the pound, attempt to do so or take or attempt to take from any agent any animal taken up by him or her in compliance with this chapter or in any other manner to interfere with or hinder the officer in the discharge of his or her duties under this chapter.

802.18 Penalty.

- (A) Separate offenses. Each day a violation of this chapter is committed or permitted to continue shall constitute a separate offense and shall be punishable under this section.
- (B) Misdemeanor. Unless otherwise provided, violation of this chapter shall constitute a misdemeanor punishable as provided in §100.06.
- (C) Petty misdemeanor. Violations of §802.02, 802.07, 802.13 and 802.14 are petty misdemeanors punishable as provided in §100.06.

The City Council of Rush City, Minnesota ordains that the following fees are hereby adopted:

<i>Code Section</i>	<i>Item</i>	<i>Cost</i>
802.05 (C)	Proof of Vaccination Deposit	\$50.00
802.05 (A)	Reclaiming Fee (pick up and return to owner immediately)	\$25.00
802.02 (B)(1)(2)	License Fee	\$10.00
802.02(B)(3)	Replacement Tag Fee	\$2.00
802.05 (C)	Pound Reclaiming Fee	\$100 + \$5/day

This ordinance shall take effect and be in force from and after its publication in the official newspaper of the City of Rush City.

Ordained by the City Council of Rush City this 13th day of June, 2011.

Mayor

Administrator