

**CITY OF DAPHNE
ORDINANCE NO. 2010-56**

**AN ORDINANCE TO AMEND ORDINANCE NO. 2003-11 CONCERNING
ANIMAL CONTROL WITHIN THE CITY OF DAPHNE**

WHEREAS the City Council of the City of Daphne has determined that certain amendments to the animal control ordinance currently in effect are necessary to effectuate and implement more efficient means of animal control within the City of Daphne; and

WHEREAS the City Council of the City of Daphne has determined that such amendments are in the interest of the public health, safety and welfare of the citizens of the City of Daphne.

NOW, THEREFORE, BE IT HEREBY ORDAINED BY THE CITY COUNCIL OF THE CITY OF DAPHNE, ALABAMA as follows:

SECTION I: That Section II of Ordinance 2003-11 is hereby repealed in its entirety and replaced with the following:

SECTION II: DEFINITIONS

Animal. The term shall mean any nonhuman, animate being which is endowed with the power of voluntary motion to include, but not limited to: Mammals, i.e. dogs, cats, horses, hogs, cows, sheep, goats, rabbits, etc.; reptiles; birds; salamanders; toads; frogs; sharks; snakes; rays; bony fishes; and amphibians.

Animal shelter. The place designated or used as such by the city for the maintenance and operation of a pound.

Animal Control Officers. All enforcement officers assigned to the City of Daphne Animal Shelter.

At large. Any animal which is off the property of its owner or person in charge and not carried by said person, kept in an effective closure or under control or restraint by such person by means of a leash in such a way as to prevent its free movement, and so as to prevent said animal from freely charging or attacking persons or animals.

Bitten. Seized with teeth or jaws such that the skin of the person or thing seized has been nipped or gripped or has been wounded or pierced and there has been probable contact of saliva with the break or abrasion of the skin.

Caged. Confinement in a container, which may include a vehicle but not its trunk, in such a way that the free movement of such animal is restrained and so as to prevent the animal caged from biting or attacking a person or animal.

Cat. All members of the domestic feline family.

City of Daphne Animal Shelter. The location designated or used as such by the City for a place of confinement of animals held pursuant to the authority of this Ordinance.

Corral. Any uncovered, enclosed parcel of land where large animals are kept.

Dog. All members of the domestic canine family.

Dogs Presumed to be vicious. Any dog which is known by the owner or person in charge to habitually chase moving vehicles or charge persons on the public streets and other public ways shall be presumed to be vicious, whether or not such dog has actually bitten or attacked a person or other animal.

Domesticated Animal. Shall mean, but is not limited to rabbits, squirrels, raccoons, pot-bellied pigs or any other animal used as a pet.

Fowl. Chicken, turkey, ducks, geese, guineas or other domestic fowl.

Livestock. Horses, mules, donkeys, oxen, sheep, goats, cows, buffaloes and swine, or any one of them.

Owner. means any person, firm, corporation, organization, or department having a right of property in the animal, or who keeps or harbors the animal, or who has it in his care, or acts as its custodian, or who permits the animal to remain on or about any premises occupied by him or her.

Person in Charge. Any person who feeds a dog or cat not owned by him or her or who otherwise cares for the animal. This definition shall not include individuals who perform humane acts for the health and safety of an animal on a one time or temporary basis.

Vicious and dangerous animal.

- (1) Any dog with a known propensity, tendency or disposition to attack unprovoked, to cause injury to, or otherwise threaten the safety of human beings or domestic animals.

- (2) Any dog which because of its size, physical nature or vicious propensity is capable of inflicting serious physical harm or death to humans and which constitutes a danger to human life or property if it were not kept in the manner required by this chapter.
- (3) Any dog which, without provocation, attacks or bites or has attacked or bitten a human being or domestic animal.
- (4) Any dog owned or harbored primarily or in part for the purpose of dog fighting, or any dog trained for dog fighting.

The terms “potentially dangerous” and “vicious” shall not apply to dogs used by law enforcement officials for legitimate law enforcement purposes, nor dogs used as certified guide dogs for the blind, hearing dogs for the deaf nor aid dogs for the handicapped nor shall it apply to licensed kennels, humane society shelters, animal control facilities, or veterinarians.

SECTION II: That Section V of Ordinance 2003-11 is hereby repealed in its entirety and replaced with the following:

SECTION V: DOG, CAT, OR DOMESTICATED ANIMAL AT LARGE

A. GENERAL PROHIBITION

No owner or person in charge of a dog, cat or domesticated animal shall permit the dog, cat or domesticated animal to be at large at any time within the City of Daphne.

B. OWNER LIABILITY

If the owner of any dog, cat or domesticated animal carelessly manages said dog, cat or domesticated animal or permits said animal to be at large, and another person, without fault suffers damage thereby, such owner shall be liable for damages.

SECTION III: That Section XXI (B) of Ordinance 2003-11 is hereby repealed in its entirety and replaced with the following:

SECTION XXI: MINIMUM PENALTIES

B. SCHEDULE OF FINES:

Any person found guilty of the provisions of this Ordinance as referenced herein, the minimum fines shall apply as follows:

<u>INFRACTION</u>		<u>FINE</u>
Allowing dog to defecate another's property	1 st offense within a twelve month period	\$15
	2 nd offense within a twelve month period	\$25
	3 rd offense within a twelve month period	\$50
Animal restrained by leash or restraining device less than six (6) feet long	1 st offense within a twelve month period	\$15
	2 nd offense within a twelve month period	\$25
	3 rd offense within a twelve month period	\$50
Cat at large/ destruction damage to property (no tag)	1 st offense within a twelve month period	\$15
	2 nd offense within a twelve month period	\$25
	3 rd offense within a twelve month period	\$50
Cat at large/ destruction damage to property (with tag)	1 st offense within a twelve month period	\$10
	2 nd offense within a twelve month period	\$25
	3 rd offense within a twelve month period	\$50
Cruelty to animals	1 st offense	Court
	2 nd offense	Court
	3 rd offense	Court
Dog on runner less than twenty (20) feet long	1 st offense within a twelve month period	\$15
	2 nd offense within a twelve month period	\$25
	3 rd offense within a twelve month period	\$50
Dog at large (with tag)	1 st offense within a twelve month period	\$10
	2 nd offense within a twelve month period	\$25
	3 rd offense within a twelve month period	\$50
Dog at large (no tag)	1 st offense within a twelve month period	\$15
	2 nd offense within a twelve month period	\$25
	3 rd offense within a twelve month period	\$50
Failure to Restrain	1 st offense within a twelve month period	\$15
	2 nd offense within a twelve month period	\$25
	3 rd offense within a twelve month period	\$50

Fowl at large	1 st offense within a twelve month period	\$15
	2 nd offense within a twelve month period	\$25
	3 rd offense within a twelve month period	\$50
Failure to quarantine	1 st offense within a twelve month period	Court
animal that has bitten	2 nd offense within a twelve month period	Court
Failure to notify	1 st offense within a twelve month period	Court
authorities of bite	2 nd offense within a twelve month period	Court
Failure to obtain rabies	1 st offense within a twelve month period	\$15
vaccination	2 nd offense within a twelve month period	\$25
	3 rd offense within a twelve month period	\$50
Failure to attach rabies tag	1 st offense within a twelve month period	\$15
	2 nd offense within a twelve month period	\$25
	3 rd offense within a twelve month period	\$50
Failure to attach tag	1 st offense within a twelve month period	\$15
(dog/cat)	2 nd offense within a twelve month period	\$25
	3 rd offense within a twelve month period	\$50
Failure to license	1 st offense within a twelve month period	\$15
(dog/cat)	2 nd offense within a twelve month period	\$25
	3 rd offense within a twelve month period	\$50
Failure to surrender	1 st offense	Court
Dangerous/Vicious animal	2 nd offense	Court
Failure to confine dog/cat	1 st offense within a twelve month period	\$25
in heat	2 nd offense within a twelve month period	\$50
	3 rd offense within a twelve month period	\$100
Keeping a dangerous and		
Vicious animal	See Section J	

Failure to provide adequate shelter/ food and or water	1 st offense within a twelve month period	\$25
	2 nd offense within a twelve month period	\$50
	3 rd offense within a twelve month period	Court
Interfering/ opposing Animal Control Officer	1 st offense within a twelve month period	Court
	2 nd offense within a twelve month period	Court
	3 rd offense within a twelve month period	Court
Keeping prohibited livestock in city limits	1 st offense within a twelve month period	\$25
	2 nd offense within a twelve month period	\$50
	3 rd offense within a twelve month period	Court
Keeping prohibited fowl in city limits	1 st offense within a twelve month period	\$25
	2 nd offense within a twelve month period	\$50
	3 rd offense within a twelve month period	Court
Livestock at large	1 st offense within a twelve month period	\$15
	2 nd offense within a twelve month period	\$25
	3 rd offense within a twelve month period	\$50
Noisy animals	1 st offense within a twelve month period	\$15
	2 nd offense within a twelve month period	\$25
	3 rd offense within a twelve month period	\$50
Operating illegal horse stable	1 st offense within a twelve month period	Court
	2 nd offense within a twelve month period	Court
Promoting animal fighting	1 st offense	Court
	2 nd offense	Court
Refusing to allow inspection	1 st offense within a twelve month period	Court
	2 nd offense within a twelve month period	Court

Tamper with animal trap/ removing animal from trap/interfering with ACO in setting/servicing trap	1 st offense within a twelve month period 2 nd offense within a twelve month period 3 rd offense within a twelve month period	Court Court Court
Unsanitary living condition- fowl/livestock	1 st offense within a twelve month period 2 nd offense within a twelve month period 3 rd offense within a twelve month period	\$25 \$50 Court
Unsanitary/inhumane living condition (any animal)	1 st offense within a twelve month period 2 nd offense within a twelve month period 3 rd offense within a twelve month period	\$50 \$100 Court
Dangerous and vicious animal at large	1 st offense 2 nd offense 3 rd offense	Court Court Court

SECTION IV: ADDITION OF SECTION XXIV

Ordinance 2003-11 is hereby amended to include the following additional section concerning vicious animals.

SECTION XXV: VICIOUS ANIMALS

A. Harboring

No person shall own or harbor any animal for the purpose of animal fighting, or train, torment, badger, bait or use any animal for the purpose of causing or encouraging said animal to attack human beings or domestic animals when not provoked.

No person shall sell, offer for sale, breed, buy or attempt to buy any vicious animal within the city.

B. Registration of Dogs

The tag and a certificate of registration or license shall be of such form and design and shall contain such information as the City shall prescribe and shall be issued to the owner or keeper upon payment of the registration fee. The registration fee for all

neutered and spayed dogs shall be \$0.00 and the registration fee for all un-neutered and un-spayed dogs shall be \$5.00.

The owner or person in charge shall at all times, keep the tag affixed to said dog or cat. It shall be unlawful for any owner or person in charge of an animal to fail to comply fully with all of the requirements of this section by failing to register a dog or a cat. It shall also be unlawful for any person, except the owner or person in charge and upon its own premises, to remove a tag from a dog or cat tagged under the provisions of this section or to place a tag upon a dog or cat for which said tag was not issued, to procure a tag from the City by fraud or misrepresentation, or to disfigure or alter the words or figures upon a tag.

If a tag becomes lost or mutilated it shall be replaced with a tag or decal marked "duplicate" upon payment of the fee of \$3.00. No duplicate tag or decal shall be issued unless the dog or cat has been inoculated for rabies within twelve (12) months of the date of issuance of the duplicate tag.

In addition to the information listed above, if an animal is vicious or presumed to be vicious, as defined herein or as is determined at a hearing for such purpose, then the owner shall provide two identification color photographs of the animal clearly showing the color, any markings and approximate size of the animal.

C. Insurance

All owners or keepers of a vicious dog or dog presumed to be vicious, as previously defined or as shall be determined to be vicious after judicial review, shall provide proof of liability insurance in a single incident amount of at least \$100,000.00, specifically covering any damage or injury which may result from the ownership, keeping or maintenance of such animal.

The policy shall contain a provision requiring the City to be named as an additional insured for the sole purpose of being notified by the insurer of any cancellation, termination or expiration of the liability insurance policy.

D. Investigation of Vicious Dogs

When any person claims that an animal is vicious, he or she shall make a sworn statement setting forth the name of the animal's owner, the location where the animal is being kept in the city, and the reason he or she believes the animal to be vicious.

The sworn statement will be delivered to the Animal Control Officer who will complete a vicious animal investigation.

Animal Control Officers are authorized to initiate a vicious animal investigation in cases where a bite or serious injury to any person has been reported or when the officer has other reason to believe a dog may be vicious.

Police officers and/or animal control officers shall be permitted to enter the exterior property where a vicious animal or animal presumed to be vicious is located for

the purpose of investigating the allegation of viciousness. If the police officer and/or animal control officer has reason to believe an animal poses an immediate threat to the health, safety or welfare of the general public, the officer may seize the animal and impound the animal at the animal shelter pending completion of the investigation and hearing.

If an animal control officer or a law enforcement officer has investigated and determined that there exists probable cause to believe that an animal is potentially dangerous or vicious, the animal control officer, the chief officer of the public pound or animal control department or his or her immediate supervisor or the head of the local law enforcement agency, or his or her designee, shall petition the Municipal Court of the City of Daphne for a hearing for the purpose of determining whether or not the animal in question should be declared potentially dangerous or vicious. Whenever possible, any complaint received from a member of the public which serves as the evidentiary basis for the animal control officer or law enforcement officer to find probable cause shall be sworn to and verified by the complainant and shall be attached to the petition.

In the event the vicious animal investigation leads the Animal Control Officer to believe the allegation is unfounded, the Animal Control Officer shall advise the complainant of his findings and submit the results of the investigation to the Municipal Court and his animal control supervisor.

E. Notice, Court Hearing, and Appeal

- (a) The owner or keeper of the animal shall be served with notice of the hearing and a copy of the petition, either personally or by first-class mail with return receipt requested. [The hearing shall be held no less than ten (10) days nor more than twenty (20) days after such notice is mailed to the owner or keeper of the animal] and shall be open to the public.
- (b) At such hearing all interested persons shall have the opportunity to present evidence on the issue of the animal's dangerousness. The court may admit all relevant evidence, including incident reports and the affidavits of witnesses, photographs and video tapes, limit the scope of discovery, and may shorten the time to produce records or witnesses.

In the event that the animal in question has caused injury to any person, the municipal judge may impound the animal, at the owner's expense, pending the hearing and determination of the complaint. If the court finds that the animal is potentially dangerous or vicious, it may make any orders authorized by this chapter or other laws, including but not limited to assessment of fines and costs as provided in this Code.

- (c) If a determination is made that the animal is potentially dangerous or vicious and no appeal is filed, the owner or keeper shall comply with the municipal court's order no later than fourteen (14) days following the rendering of the decision. If the owner or keeper of the animal contests the

determination, he or she may, within fourteen (14) days of the municipal court's decision appeal the decision to the circuit court of the county. All filing fees and costs shall be paid by the owner or keeper of the animal. The owner or keeper of the animal shall serve notice upon the city that the appeal has been filed.

- (d) The Circuit Court shall conduct a hearing de novo, and make its own determination as to potential danger and viciousness and make other orders authorized by this chapter, based upon the evidence presented. The court may admit all relevant evidence, including incident reports and the affidavits of witnesses, limit the scope of discovery, and may shorten the time to produce records or witnesses. If the court rules the animal to be potentially dangerous or vicious, compliance with the order shall begin within seven (7) days of the date of the court's determination.
- (e) The determination of the circuit court shall be final and conclusive upon all parties. However, the animal control authority shall have the right, following due process, to later declare an animal to be vicious or to determine that the animal constitutes a threat to the public health and safety, for any subsequent actions of the animal.

F. Regulation of Potentially Dangerous or Vicious Animals

If it is determined at the hearing that the animal is dangerous or vicious, the Court may order the following:

- (a) Confinement:
 - (1) Owners shall provide an exterior perimeter fence suitable to contain an average animal of the same type. The perimeter fence shall be constructed of chain link or wooden privacy type and shall be at least four (4) feet in height.
 - (2) Owners shall provide an additional fence or pen of adequate size inside the perimeter fence to humanely confine the vicious animal.
 - (a) This additional fence or pen may not share common fencing with the perimeter fence.
 - (b) This additional fence or pen must have secure sides and a secure top attached at all sides.
 - (c) All four sides of this additional fence or pen must be sunk at least two feet into the ground or the fence or pen must be built over a concrete pad to prevent the animal from digging out.
 - (d) The additional fence or pen must have an inward-opening gate and shall be kept locked at all times by pad lock or key lock except when tending to the care of the animal.

- (e) The sides of this additional fence or pen shall be from ground to top at least twice the height of the animal, the height of the animal being measured from its shoulders.
- (f) The additional fence or pen must not be positioned so that neighbors or passers by have access to the animal. It must be no less than twenty (20) feet from any neighboring property line.
- (g) Signs shall be posted on each side of this additional fence or pen stating that a vicious animal is enclosed and shall specify the type of animal enclosed, i.e. "Vicious Dog". Signs must be printed and legible from 20 feet.
- (h) The pen or structure must also provide the animal with protection from the elements and must at all times be kept in sanitary condition.

(3) Whenever the animal is outside either the additional fence or pen provided for this section:

- (a) It must be attended by the owner; and
- (b) It must be restrained by a secure collar and leash or rope to [no longer than eight (8) feet] and of sufficient strength to prevent escape; and
- (c) It must be securely muzzled so as to effectively prevent such animal from biting another animal or person

(4) No vicious animal shall be allowed outside the owner's property except in emergencies or for normal or necessary medical or health related treatment.

(b) Destruction of a Vicious Dog

In the event it is determined at the hearing that the release of the animal would create a significant threat to the public health, safety and welfare, the animal may be humanely destroyed by the Department of Animal Control.

(c) When it is Determined that the Animal is not Dangerous or Vicious

In the event it is determined at the hearing that the animal is not vicious, the court shall inform the complainant of said findings.

G. Minor Owner or Keeper

In the event that the owner or keeper of a potentially dangerous or vicious animal is a minor, the parent or guardian of such minor shall be liable for all injuries and

property damage sustained by any person or domestic animal caused by a unprovoked attack by such potentially dangerous or vicious animal.

H. Procedure Upon Loss, Sale or Transfer of Animal

The owner or keeper of a potentially dangerous or vicious animal shall notify the department of animal control or the police department immediately if such potentially dangerous or vicious animal is loose or missing or if the potentially dangerous or vicious animal has attacked or wounded a human being or another animal. If the animal in question dies, or is sold, transferred, or permanently removed from the city or county where the owner or keeper resides, the owner of a potentially dangerous or vicious animal shall notify the animal control department of the changed condition and new location of the animal in writing within two (2) working days. If the owner or keeper of a potentially dangerous or vicious animal moves the animal to a different address within the city limits of the city, such owner or keeper shall notify the department of animal control of such fact and the new address within twenty-four (24) hours.

I. Keeping Potentially Dangerous or Vicious Animals

It shall be unlawful for any owner, keeper or other person to be in violation of any provision of this chapter or any order of any court as provided in this chapter. Any owner or keeper found to be in violation of this section shall be guilty of a misdemeanor and shall be punishable as provided in Subsection J of this Section.

J. Penalty for Violation

The penalty for violation of any provision of this Section shall be as follows:

1 st Offense	Not less than \$100.00 or more than \$350.00 and/or not to exceed 6 months in jail;
2 nd and Subsequent Offenses	Not less than \$350.00 or more than \$500.00 and/or not to exceed six (6) months in jail.

In addition, the Court shall assess the violator with any and all costs incurred for the impoundment and/or destruction of the dog.

K. Confinement Generally

No owner, keeper or harbinger of an animal shall permit a vicious or dangerous dog to be kept on a chain, rope or other type of leash outside of its fence and/or pen unless it is under physical control of a leash. Such dogs may not be leashed or chained to inanimate objects such as trees, posts, buildings, etc. outside of the perimeter fence and/or pen. No vicious or dangerous dog may be kept on a porch, patio or in any other

portion of the house or structure that would allow the dog to exit such building or structure on its own volition. In addition, no such animal may be kept in a house or structure where screen doors are the only obstacle preventing the dog from exiting the structure.

L. Registration of Vicious Dogs

All dangerous or vicious dogs as defined herein or as found to be vicious after a Municipal Court hearing shall be registered on the City's website. Such registry shall include the address where the dog is located and identifying information on the dog, including two (2) identifying color photographs of the dog. The registry shall not contain the name or names of the owners or tenants at said location.

SECTION V: ADDITION OF SECTION XXVI

Ordinance 2003-11 is hereby amended to include the following additional section concerning donations to the City.

SECTION XXVI: DONATIONS TO ANIMAL SHELTER

This section shall establish an additional procedure for donations to the City of Daphne Animal Shelter via online payment at the City of Daphne Animal Shelter website through generally accepted credit cards.

SECTION VI: CONFLICT WITH OTHER ORDINANCES

Any Ordinance heretofore adopted by the City Council of the City of Daphne, Alabama which is in conflict with this Ordinance is hereby repealed to the extent of such conflict.

SECTION VII: SEVERABILITY

The provisions of this Ordinance are severable. If any provision, section, paragraph, sentence, or part thereof shall be held unconstitutional or invalid, such

decision shall not affect or impair the remainder of the Ordinance, it being the legislative intent to ordain and enact each provision, section, paragraph, sentence, and part thereof separately and independently of each other.

SECTION VIII: EFFECTIVE DATE

This Ordinance shall be in full force and effect upon its adoption as provided by law by the City Council of the City of Daphne.

ADOPTED AND APPROVED BY THE CITY COUNCIL OF THE CITY
OF DAPHNE, ALABAMA ON THIS THE 7th day of September, 2010.

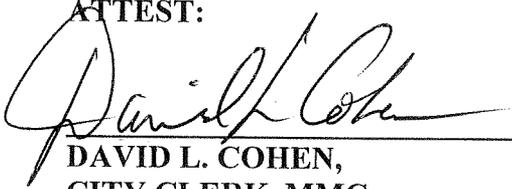
THE CITY OF DAPHNE,
AN ALABAMA MUNICIPAL CORPORATION



AUGUST PALUMBO,
COUNCIL PRESIDENT



FRED SMALL,
MAYOR

ATTEST:


DAVID L. COHEN,
CITY CLERK, MMC