

ORDINANCE NO. 2018- 033 - ADM

AN ORDINANCE AMENDING SECTION 10-52 AND SECTION 10-54 OF THE CODE OF ORDINANCES OF THE CITY OF TRUSSVILLE TO PROVIDE FOR THE USE OF A NON-TRAFFIC COMPLAINT RELATED TO PROVIDING NOTICE OF VIOLATION OF CERTAIN OFFENSES UNDER THIS SECTION AND PROVIDING AUTHORITY FOR LAW ENFORCEMENT TO ACT IN CERTAIN SITUATIONS WHERE AN ANIMAL IS IN DANGER.

WHEREAS, section 10-52 of the Code of Ordinances of the City of Trussville sets certain requirements for maintaining animals and pets within the corporate limits; and

WHEREAS, section 10-54 of the Code of Ordinances of the City of Trussville provides the procedure for prosecution of any violation of this section; and

WHEREAS, the use of a Non-Traffic Complaint (or “NTC”) has become common place since its creation to provide law enforcement a more effective and less time consuming way to address certain municipal and state law violations; and

WHEREAS, in the event a law enforcement officer observes an animal in distress, an officer should maintain the discretion to save the animal from said distress that an owner has placed said animal; and

WHEREAS, section 11-45-1 of the Code of Alabama (1975) authorizes municipalities to enact ordinances for the safety, to preserve the health, promote the prosperity, and improve the morals, order, comfort, and convenience of the inhabitants of the municipality.

NOW THEREFORE, BE IT ORDAINED by the City Council of the of the City of Trussville, Alabama, that section 10-52 of the Code of Ordinances of the City of Trussville be and is hereby amended to state the following:

Sec. 10-52. - General prohibitions and duties.

- (1) *Public nuisance*. It shall be unlawful for any person to own, keep, possess or maintain an animal in such a manner as to constitute a public nuisance, as defined by this article and state law.

By way of example, and not of limitation, the following acts or actions by an owner of an animal are hereby declared to be a public nuisance and are therefore unlawful:

- a. Allowing or permitting an animal to damage the property of anyone other than its owner, including, but not limited to, getting into or turning over garbage containers, or damaging gardens, flowers and vegetables, or defecating upon the property of another.
- b. Maintaining an animal in an unsanitary environment that results in offensive odors or is dangerous to the animal or to the public health, safety and welfare, or failing to

maintain the animal in a condition of good order and cleanliness which increases the probability of disease transmission.

- c. Maintaining the owner's property in a manner that is offensive, annoying, or dangerous to the public health, safety, or welfare of the community because of the number, type, variety, density, or location of animals on the property.
- d. Allowing or permitting an animal to bark, whine, howl, crow, or cackle in an excessive and untimely fashion so as to interfere with the reasonable use and enjoyment of neighboring premises.
- e. Maintaining an animal that is diseased or dangerous to the public health.
- f. Maintaining an animal that habitually or repeatedly chases, snaps at, or attacks pedestrians, joggers, animals walked on a leash by owners, bicycles, or other vehicles, unless such animal is under effective restraint.

(2) *General prohibitions and duties—Running at large.* No owner or any person having charge of control of an animal shall cause or permit such animal to run or be upon a street, sidewalk, thoroughfare, alley or public place within the city unless such animal be attached to a leash in the hands of such owner or other person in charge, or be restrained by other control device; provided however, that such owner or person in charge be of sufficient age, training, and physical capabilities to maintain complete control of said animal.

(3) *Abandonment.* No person shall abandon or set loose any domestic animal within the city with the intention of avoiding the responsibility for the custody or care of that animal.

(4) *Causing escape.* No owner or other person shall take an animal from the confinement or restraint of its owner or of the person in charge or control of it or cause an animal to escape from such confinement or restraint without specific permission from the owner or person in charge or control of the animal.

(5) *Cruelty to animals.* The following shall constitute violations of this article and shall be strictly prohibited:

- a. Failing to provide adequate food or water for any animal, provided such person is the owner or person in charge of such animal.
- b. Overworking or overloading any animal in a manner which causes physical pain and suffering.
- c. Beating, torturing, injuring, tormenting, poisoning, depriving of necessary sustenance, or mutilating any animal in a manner which causes pain, suffering, or death.
- d. Failing to provide adequate medical attention for any sick, diseased, or injured animal, provided such person is the owner or person in charge of such animal.
- e. Keeping any animal under unsanitary and inhumane conditions or in unsanitary or inhumane conditions that are detrimental to the animal's health and general welfare.
- f. Teasing, molesting, or harassing any animal.
- g. Setting any rabbit, raccoon, fox or other such animal loose for the purpose of chasing or hunting the animal, or conducting a race using such animal.

- h. Promoting, permitting, holding, managing, conducting, allowing, or attending any fight or combat between one or more animals or fowls, or between animals and humans.
- i. Failing to provide adequate shelter for an animal, provided such person is the owner or person in charge of such animal.
- j. Placing or confining an animal or allowing an animal to be placed or confined in a motor vehicle under such conditions or for such a period of time as to endanger the health or welfare of the animal because of temperature, lack of food or water, or such other conditions as may reasonably be expected to cause suffering, disability, or death.
- k. Restraining an animal with a leash or other restraining device that is less than eight feet long, unless walking or training such animal.

(6) *Aggravated Cruelty to Animals.*

a. Any person who unlawfully or maliciously kills, disables, disfigures, or injures any animal shall be guilty of a misdemeanor offense against the City and shall be punished as provided herein. Nothing in this section shall be construed to prohibit the dehorning of cattle.

b. The use of the Uniform Non-Traffic Ticket Complaint shall not be authorized to charge under this section.

(7) *Keeping of hogs.*

- a. It shall be unlawful for any person to keep hogs within the city, except in areas zoned for agricultural use, and under circumstances where no noise, odor, or pollution violation or nuisance is occasioned thereby, and at a place more than 300 feet from any neighboring residence, business, house, church, or school yard, and at a place more than 100 feet from any road, street, or other thoroughfare.
- b. All hogs in transit or housed or penned for sale at a duly authorized marketing place within the city shall be removed by sale, slaughtering, or otherwise within eight days. All pens or enclosures wherein said hogs are kept shall have concrete floors with ample drains and water connections, as approved by the health department. Said pens and enclosures shall be cleaned daily with suitable insecticides or deodorants, or both, as approved by the health department, so that fly control is satisfactorily maintained.

(8) *Noisy animals.*

- a. It shall be unlawful and a nuisance for any person to keep on any tract, lot, or premises within the city any animal or group of animals known to said person to habitually or continuously emit sounds or noises of such volume and nature as to unreasonably interfere with or disturb the peace, quiet, comfort, and repose of persons of ordinary sensibilities within the neighborhood in the reasonable use and enjoyment of any residential property.
- b. Any owner or person in charge who is found in violation of this section shall be guilty of maintaining a nuisance; provided, however, that no prosecution shall be commenced pursuant to this subsection nor any summons and complaint or warrant issued except

upon affidavits of no less than three persons residing in or occupying different premises in the area where the violation occurred. Said affidavits shall be sworn to and subscribed before the magistrate of the city.

(9) *Keeping wild, vicious, exotic mammals, fowl or reptiles.*

- a. It shall be unlawful for any owner or person in charge to keep any wild, dangerous, exotic, or poisonous animal on his premises in such a manner as to endanger the life or health of any person or other animal. Any wild, exotic, dangerous, or poisonous animal shall be securely and humanely confined or bound in such a manner as to prevent such animal from biting or attacking or frightening a person or other animal.
- b. It shall be unlawful for any owner or person in charge to allow or permit any animal that is vicious or presumed to be vicious to be off the premises of the owner or person in charge, unless said animal is caged or leashed and muzzled and under effective restraint so as to prevent it from attacking or injuring a person or another animal.
- c. It shall be unlawful for any owner or person in charge to keep or to permit to be kept on any residential premises any wild, exotic, vicious, or poisonous animal for display or for exhibition purposes for a fee.

(10) *Capturing or killing birds.*

- a. It shall be unlawful for any person to pursue, injure, capture, kill, or destroy any songbird of any kind, at any time, within the city. This section shall not be construed so as to apply to any animal control officer, any law enforcement officer, or other duly designated agent or employee of the city when a nuisance exists or when there is a hazard to health or safety which in the judgment of said officer cannot be otherwise remedied.
- b. The city shall be, and the same is hereby designated as, a bird sanctuary.

(11) *Horses at large.* It shall be unlawful for any owner or person in charge to allow a horse to stand in any street within the city unless the owner or person in charge is in attendance or the horse is securely hitched. Any horse not so attended or securely hitched shall be considered to be at large. The owner or person in charge of any horse will be required to attach to said horse a diaper, bag, or other device designed to collect feces in such a manner as to collect the feces of said horse while the horse is on a public street, thoroughfare, or trail, or is otherwise in a public place, including, but not limited to, parks, trails, and other public areas.

(12) *Chaining of animals.* Animals shall not be tied or chained in a manner that presents a hazard to themselves or to the general public.

(13) *Owner's duty to remove overturned or scattered garbage.* It shall be the duty of the owner or person in charge of any dog or cat that has been allowed by said person to run at large to pick up and remove to the landfill, or to a secure authorized container, any garbage or refuse which said animal has caused to be overturned, spilled, or scattered upon any residential lot occupied for human habitation, or upon any right-of-way adjacent thereto. It shall be unlawful for any such person to fail or refuse to pick up said refuse upon demand from the owner or occupant thereof, or upon demand of any animal control officer, any law enforcement officer, or any other duly designated agent or employee of the city; provided,

however, that no prosecution shall be commenced and no arrest made pursuant to this section except upon affidavit made before and summons and complaint or warrant issued by a duly appointed municipal judge or magistrate of the city.

(14) *Duty of owner for removal of feces.*

- a. It shall be the duty of the owner or person in charge of any dog, cat, or horse to remove and dispose of any feces deposited by said animal upon the grounds of any public park or public place, upon any residential lot or another occupied for human habitation, upon any lot utilized for commercial or industrial purposes, or upon any right-of-way adjacent thereto.
- b. It shall be unlawful for any person to fail or refuse to remove such feces upon demand by the owner or occupant thereof or by any animal control officer, law enforcement officer, or other duly designated agent or employee of the city; provided, however, that no prosecution shall be commenced and no arrest made pursuant to this section except upon affidavit made before and summons and complaint or warrant issued by a municipal judge or magistrate.

(15) *Duty to restrain dogs and cats.*

- a. It shall be the duty of every owner or person in charge of a dog to keep said animal under effective restraint while the same is within the city, and it shall be unlawful for the owner or person in charge of any dog to fail to keep said animal under effective restraint. Proof that a dog is not properly restrained off the premises of the owner or person in charge shall be prima-facie evidence of a violation. Negligent failure to provide or maintain effective restraint shall not be a defense. Competent evidence that said failure was occasioned by an unforeseeable and independent act of a third person shall shift the burden on the city to prove otherwise.
- b. It shall be unlawful for the owner or any person having custody or control of any cat within the city to allow such cat to be a nuisance or cause destruction or damage to the property of another.
- c. No prosecution shall be commenced and no arrest made pursuant to this section except upon affidavit made before and summons and complaint or warrant issued by a judge or magistrate of municipal court.

- (16) A law enforcement officer who witnesses an animal in distress as provided in section 10-52(5)(j), an officer may take actions consistent with the officer's experience, training, policy, and applicable law that the officer deems reasonably prudent. If an animal is retrieved from a confined motor vehicle as in section 10-52(5)(j), the animal shall be placed with the humane society pending further order of the municipal or any other court.

NOW THEREFORE, BE IT ORDAINED by the City Council of the of the City of Trussville, Alabama, that section 10-54 of the Code of Ordinances of the City of Trussville be and is hereby amended to state the following:

Sec. 10-54. - Violation and penalties.

- (1) *Complaint procedure.* Any citizen wishing to make a complaint of a violation of this article may present himself or herself to the city magistrate to commence proceedings against the person in violation of the article. The complaining individual must swear under oath that the violation occurred and, if the magistrate has probable cause to believe that the offense as described constitutes a violation of this article, a summons and complaint may be issued to the individual. No summons and complaint shall be issued for violations of subsection 10-52(1)d. or 10-52(7) of this article unless affidavits by three different persons residing in or occupying different premises in the area where the violation occurred have been sworn to and subscribed before the magistrate, and the magistrate has probable cause to believe the offense as set out in the affidavits constitutes a violation of this article.
- (2) *Issuance of summons and complaint by law enforcement officer.* Any law enforcement officer of the city or any law enforcement officer of the state shall be authorized to issue a Non-Traffic Ticket Complaint or seek a summons and complaint issued by a magistrate, at the discretion of the officer, to any person charged with a violation of the offenses enumerated in section 10-52(2) through section 10-52(5)(a)-(k) or any other provision of this chapter unless otherwise prohibited by state law or these Code of Ordinances. Such summons and complaint procedure shall be in lieu of custodial arrest.
- (3) *Summons and complaint procedure by law enforcement officer.* In the event a summons and complaint is issued, and not a Non-Traffic Ticket Complaint, when a person is arrested for a violation of this article, the officer shall take the name and address of said person and any other information required by law. A summons and complaint shall then issue as provided by law.
- (4) *Plea of guilty and imposition of fine before magistrate authorized.*

When a person is charged with a violation of this article, and when that person desires to waive legal process on the question of his innocence and plead guilty and voluntarily settle the charge, he or she may do so by pleading guilty before a city magistrate and paying a sum to the municipal court magistrate. A plea of guilty shall be accepted by the magistrate only after the defendant has executed the notice and waiver of rights provision on the summons and complaint. Settlement fines will be assessed pursuant to the following schedule, which may be amended from time to time by the city council:

- i. First violation: \$50.00 fine plus court costs;
 - ii. Any second or subsequent violation: requires a mandatory court appearance. A magistrate is not authorized to accept a plea of guilty on a second or subsequent offense.
- (5) Nothing contained herein shall be construed to limit the ability of a municipal court judge to impose any sentence authorized under section 1-5 of this Code of Ordinances or which may be authorized by state law or these ordinances.
 - (6) *Payment of fine.* The above fines and costs may be voluntarily paid to the municipal court magistrate before the court date shown on the summons and complaint. The magistrate shall be authorized to receive the amount in full settlement of the alleged offense and to give a receipt on the behalf of the city. If such payment is made, no further prosecution for that

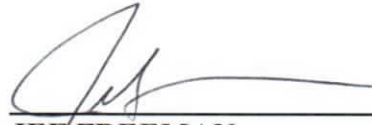
specific violation shall be instituted or maintained in any court. All such payments must be made by personally appearing before said magistrate.

- (7) *Trial.* Any offender wishing to plead not guilty to a violation is required to appear in court.
- (8) *Rights of the defendant.* All owners of animals subject to the provisions of this article shall have the right to enter a plea of not guilty to any violation charged against said defendant and secure a trial in the municipal court.
- (9) *Failure to appear or properly settle charges.* If the defendant fails to voluntarily settle his or her charges or fails to appear as specified in the summons and complaint, the municipal court judge may issue a warrant for his or her arrest commanding that he or she be brought before the court to answer the charge contained in the summons and complaint. In addition, any person who willfully violates his or her written promise or bond to appear shall be guilty of the separate offense of failure to appear, which is a misdemeanor, regardless of the disposition of the charge upon which he or she was originally arrested.
- (10) *Review of prior charges.* The municipal court, upon conviction, shall have the duty and responsibility to consider all prior charges brought against the offender (whether settled or not) and will specifically consider all charges in the past.
- (11) *Additional power of the municipal court.* The municipal judge shall have the following additional legal authority in connection with this ordinance and the enforcement thereof. Said authority shall include the following:
 - a. Upon a sworn complaint being made by a citizen, a duly authorized municipal officer or employee, or a law enforcement officer of the city to the court clerk, the court shall be authorized to issue the following orders:
 - i. To direct seizure, impoundment, and/or the delivery of said animal to the city's impoundment center;
 - ii. To order that the animal be destroyed if there exists a reasonable necessity for said action;
 - iii. To assess all costs or expenses to the victim, including restitution, against said owner or responsible person;
 - iv. To increase the amount of the fine above that specified in the schedule.
 - b. Upon the trial and conviction of an owner for a violation of any provision of this article, the municipal court shall have the authority to issue the following orders, in addition to all other power and authority conferred by law:
 - i. To impose on the defendant a requirement that the animal be destroyed or removed from the city limits;
 - ii. To impose as a specific condition on the defendant reasonable conditions and restrictions relating to the possession and/or control of the animal;
 - iii. Such other terms and conditions as the court may deem proper under the circumstances.

Section 2. Enactment Provisions.

- A. In the event any part of this ordinance shall be declared unconstitutional or void by a court of competent jurisdiction, the remain provisions shall not be altered or effected and shall remain in full force and effect.
- B. These amendments shall be enacted following the passage, adoption, and publication as provided by law.

ADOPTED this the 27th day of November, 2018.



JEF FREEMAN
COUNCIL PRESIDENT



BUDDY CHOAT
MAYOR

ATTEST:



LYNN PORTER
CLERK