

ORDINANCE 2007-03
OF THE CITY OF LEMOORE
Amending Title 5, Chapter 1, Article 5 of the Lemoore Municipal
Code Relating to Animal Control

The City Council of the City of Lemoore does ordain as follows:

SECTION 1. Section 5-1-3 is amended to read:

5-1-3: DEFINITIONS. [Same, but added dangerous animal, potentially dangerous animal, guide dog, signal dog]

As used in this chapter, all words shall have their usual meaning except that the following words or terms as used in this chapter shall be defined as follows:

AGENT: Any agency, society or other organization with which the City has contracted to carry out the provisions of this article.

ANIMAL CONTROL OFFICER: The chief of police or his/her designee or any person employed by the City or under the supervision of the animal control officer or the police department for the purpose of enforcing the animal control laws and regulations. When the City has contracted for the performance of such services, animal control officer shall mean the party with whom the City has so contracted.

ANIMAL LICENSE FEE COLLECTOR: The animal control officer or any person or entity delegated by and under the supervision of the animal control officer for the purpose of issuing animal licenses for the City of Lemoore.

CITY: The City of Lemoore.

COUNTY HEALTH OFFICER: The Kings County health officer, or his designee.

DANGEROUS ANIMAL: Any animal that has bitten, injured or aggressively pursued any human being or other animal which the Animal Control Officer, after conducting an investigation pursuant to Section 5-1-56 or a Hearing Officer, after an appeal hearing, finds that because of its behavior, temperament and physical characteristics combined with the manner in which it is maintained will probably cause great bodily harm to a human being or other animal in the future. No animal shall be found to be a dangerous animal based only on circumstances set forth in Section 5-1-56 H.

DISEASED OR INJURED ANIMAL: Any animal not suspected of rabies which is apparently either diseased, sick, injured, disabled, infirm or crippled.

DOG KENNEL: Any place or premises where four (4) or more dogs or cats or combinations thereof, over the age of four (4) months, are kept. For the purposes of this chapter, "keeping" includes boarding, grooming, breeding, training, sale and related purposes other than placed maintained by a licensed veterinarian or society for the prevention of cruelty to animals.

FOWL: As used herein includes chickens, turkeys, emus, ostriches, and all other domestic or domesticated fowl other than household pets.

GUIDE DOG: Any dog trained to lead a blind person.

HARBORING: A person “harbors” a dog within the meaning of this chapter when he feeds or shelters a dog.

LIVESTOCK: As used herein includes horses, ponies, mules, burros, jack or jennies, cows, bulls, calves, heifers, sheep, goats, swine, hogs, pigs, and all other domestic or domesticated animals other than household pets.

OWNER: Any person, association, firm or corporation owning, having an interest in, or having control, custody, or possession of any animal.

POTENTIALLY DANGEROUS ANIMAL: Any animal that has bitten, injured or aggressively pursued any human being or other animal which the Animal Control Officer, after conducting an investigation pursuant to Section 5-1-56 or a Hearing Officer, after an appeal hearing finds that because of its behavior, temperament and physical characteristics combined with the manner in which it is maintained there is a substantial possibility that it will cause injury or great bodily harm to a human being or other animal in the future. No animal shall be found to be a potentially dangerous animal based solely on circumstances set forth in Section 5-1-56 H.

RUNNING AT LARGE: A dog “runs at large” within the meaning of this chapter when it is on private property without the permission of the person owning or occupying the property, or when it is upon public property and is not upon a leash or chain continuously held in the hand of a responsible person capable of controlling such dog.

SIGNAL DOG: Any dog trained to lead or assist a deaf person.

SECTION 2. Section 5-1-5 is amended to read:

5-1-5: PRIVILEGED ENTRY: [Same, but amended to address potentially dangerous animals]

For the purpose of discharging the duties imposed by this chapter or other applicable law and to enforce the same, the animal control officer or any peace officer may enter upon private property, except dwellings located thereon, as follows:

A. During daylight:

1. When in pursuit of any animal which he has reasonable or probable cause to believe is subject to impoundment pursuant hereto or other applicable law.
2. To impound or place in isolation any animal thereon which he has any cause whatsoever to believe or suspect has rabies or is a potentially dangerous animal or dangerous animal.
3. To inspect or examine animals isolated thereon pursuant hereto or other applicable law.

B. At night:

1. When in pursuit of an animal which he has reasonable or probably cause to believe is subject to impoundment pursuant hereto or other applicable law.

2. To impound or place in isolation any animal thereon which he has any cause whatsoever to believe or suspect has rabies or is a potentially dangerous animal or dangerous animal.

As a condition of the authority set forth in this section, except where time does not permit in an emergency or when in fresh pursuit, before entering upon private property a reasonable effort shall be made to locate the owner or possessor thereof to request permission to enter upon such property and to explain the purpose for such entry.

SECTION 3. Section 5-1-8 is amended to read:

5-1-8: ENFORCEMENT PROVISIONS: [Same, amended to correct “public” to “peace”]

In addition to other authority provided by law for making arrests, the animal control officer and his deputies are hereby designated as peace officers and employees and are authorized to make arrests according to Penal Code section 836.5 for the purpose of enforcing and carrying out provisions of this chapter.

SECTION 4. Section 5-1-46 is amended to read:

5-1-46: REVOCATION OR SUSPENSION OF KENNEL PERMIT: [Same, amended to add reference to Administrative Hearing Ordinance]

Any kennel permit issued under the provisions of this article may be revoked or suspended by the animal control officer whenever, in his opinion, the kennel for which such permit was issued is not being maintained in a sanitary or healthful condition or is not provided with adequate care and supervision for the animals confined therein. The revocation or suspension shall become effective seven (7) days after written notice that such defective condition is found to exist, has been served by the inspecting animal control officer or seven (7) days after such notice is deposited in the mail, addressed to the person owning, managing or operating the kennel, by first class mail. The written notice shall advise the permittee of a right to a hearing in accordance with the City's Administrative Hearing Procedures Ordinance.

SECTION 5. Section 5-1-53 is amended to read:

5-1-53: ISOLATION OF DOGS SUSPECTED OF RABIES: [Same, amended to add “of rabies” to title]

The Animal Control Officer shall have authority to place in isolation any dog, licensed or not, which in the opinion of a licensed veterinarian or the county health officer, displays symptoms suggestive of rabies. Such isolation shall be at an animal pound unless the owner of such dog, with the approval of the county health officer, arranges with a licensed veterinarian for such isolation in a private animal hospital or clinic. Any dog placed in such isolation shall be kept strictly confined and under such observation as may be required by the county health officer. Such isolation shall continue for at least ten (10) days from the date the symptoms suggestive of rabies were first observed. Such isolation may be continued for a period longer than ten (10) days if, in the opinion of any licensed veterinarian or the county health officer, such longer period is

necessary. At the expiration of such confinement, any dog confined at an animal pound shall be released upon payment of the fees set forth in section 5-1-75 of this chapter, if, in the opinion of any licensed veterinarian or the county health officer, such dog does not have rabies.

SECTION 6. Section 5-1-56 is amended to read:

5-1-56: IMPOUNDMENT; BITING OR ATTACKING ANIMAL: [New section]

A. The Animal Control Officer shall have the power to summarily and immediately impound a dog or other animal where there is evidence it has attacked, bitten or injured any human being or other animal pending any court, dog license, or animal permit revocation proceeding arising from the attack, bite or injury. The Animal Control Officer or his duly authorized representative may enter and inspect private property to enforce the provisions of this section.

Failure to surrender to the Animal Control Officer, upon demand, a dog or other animal which is subject to being impounded pursuant to this section is a misdemeanor.

A dog or other animal, impounded pursuant to the authority of this section, shall be returned to the owner or custodian as provided in Section 5-1-59 or when it is no longer required as evidence, or if a notice of an investigation to determine if an animal is dangerous or potentially dangerous pursuant to Section 5-1-59 has not been served on the owner or custodian within seven days after the impoundment.

B. In lieu of impoundment pursuant to this section, the Animal Control Officer may permit the dog or other animal to be confined at the owner's or custodian's expense in a dog kennel or veterinary facility within the city or at the owner's or custodian's residence in an enclosure described in subsection D of this section, provided that the owner or custodian agrees to all the following conditions:

1. Shall not remove the dog or other animal from the kennel, veterinary facility or residence without the prior written approval of the Animal Control Officer or his authorized representative; and

2. Shall make the dog or other animal available for observation and inspection by the Animal Control Officer and members of law enforcement or their authorized representatives; and

3. Shall verify to the Animal Control Officer that the dog or other animal will be confined in such a way as to prevent its coming into contact with members of the public other than the immediate family of the owner or custodian.

C. The Animal Control Officer or his designated representative may have a dog or other animal impounded or confined as provided in subsections (a) or (b), identified by means of permanent marking prior to release from impoundment or confinement.

D. For purposes of this section, "enclosure" shall mean a fence or structure of at least six feet in height, forming a confined area sufficient to prevent the entry of young children, and effective in containing the dog or other animal. Such enclosure shall be securely enclosed and locked and equipped with secure sides, top and bottom, and shall be designed to prevent the dog or other animal from escaping the enclosure.

SECTION 7. Section 5-1-59 is added to the Code to read:

5-1-59: DANGEROUS OR POTENTIALLY DANGEROUS ANIMAL; PROCEDURES: [New section]

- A. **Investigation and Declaration.** The Animal Control Officer shall conduct an investigation to determine whether or not a dog or other animal confined or impounded pursuant to section 5-1-56 is a dangerous or potentially dangerous animal. Within seven days of the date of impounding the dog or other animal pursuant to section 5-1-56 the Animal Control Officer shall serve upon the owner or custodian of the dog or other animal by regular and certified mail a notice of investigation to determine if the animal is dangerous or potentially dangerous. This notice shall describe the purpose of the investigation, how the investigation will be conducted, the factors the Animal Control Officer will consider in making a finding and a deadline for completing the investigation. The investigation may include interviewing the owner(s) of the dog or other animal, witnesses, reviewing records of citations and reports of previous incidents involving the dog or other animal and evaluating the temperament of the dog or other animal through behavioral testing. In making a finding regarding whether the dog or other animal is dangerous or potentially dangerous, the Animal Control Officer shall consider the factors set forth in subsection C. If after completing the investigation the Animal Control Officer finds that the dog or other animal is dangerous or potentially dangerous, the Animal Control Officer shall serve by regular mail and certified mail a notice of declaration as described in subsection B. If after completing the investigation the Animal Control Officer determines that the dog or other animal is not dangerous or potentially dangerous, the Animal Control Officer shall inform the owner of the dog or other animal of this finding and release the dog or other animal to the owner. The investigation shall be completed and any declaration served within twenty-one calendar days of the date the dog or other animal was impounded pursuant to section 5-1-56.
- B. **Dangerous or Potentially Dangerous Animal; Notice of Declaration.** The notice of declaration finding that a dog or other animal is dangerous or potentially dangerous shall contain:
1. A physical description of the animal, including the breed, if known, and the animal's license number, if any;
 2. A statement informing the owner of the animal that the Animal Control Officer has declared the animal a "dangerous animal" or a "potentially dangerous animal," including a brief and concise description of the facts that form the basis for the declaration of the animal as a dangerous animal or a potentially dangerous animal;
 3. A statement informing the owner of the animal of the possible consequences should a declaration of dangerous animal or potentially dangerous animal become final;
 4. A statement informing that the owner or custodian of the animal may appeal the declaration provided that the appeal is made in writing as provided in subsection F of this Section.
 5. A statement that the appeal request must be in writing and filed with the City Clerk's Office within five calendar days of service of the notice of declaration;

6. If the animal is declared dangerous, an order that the animal be humanely destroyed as provided for in subsection D;

7. If the animal is declared potentially dangerous, an order setting forth any or all of the conditions set forth in subsection E;

8. A statement that failure to appeal the Notice of Declaration will constitute a waiver of all rights to an administrative hearing and will be a final determination of the matter, and if after ten days from the date of the issuance of the Notice of Declaration, the owner or custodian has failed to inform the Animal Control Officer of an intent to comply with the conditions set forth in the notice of declaration, the animal will be deemed abandoned and may be humanely destroyed or otherwise disposed of;

9. A statement that failure to comply with all of the conditions set forth in the Notice of Declaration will result in the Animal Control Officer proceeding with impounding and destroying or otherwise disposing of the animal.

C. **Determination of Dangerous or Potentially Dangerous Animal; Evidence.** In making a determination that a dog or other animal is or is not dangerous, evidence of the following shall be considered:

1. Any previous history of the dog or other animal attacking, biting or causing injury to a human or other animal;

2. The nature and extent of injuries inflicted and the number of victims involved;

3. The place where the bite, attack or injury occurred;

4. The presence or absence of any provocation for the bite, attack or injury;

5. The extent to which property has been damaged or destroyed;

6. Whether the dog or other animal exhibits any characteristics of being trained for fighting or attack or other evidence to show such training or fighting;

7. Whether the dog or other animal exhibits characteristics of aggressive or unpredictable temperament or behavior in the presence of human beings or dogs or other animals;

8. Whether the dog or other animal can be effectively trained or retrained to change its temperament or behavior;

9. The manner in which the dog or other animal had been maintained by its owner or custodian;

10. Any other relevant evidence concerning the maintenance of the dog or other animal; and,

11. Any other relevant evidence regarding the ability of the owner or custodian, or the Animal Control Officer, to protect the public safety in the future if the dog or other animal is permitted to remain in the city.

D. Disposition of Dangerous Animal.

1. It shall be unlawful for any person to own, possess, harbor or keep any dog or other animal declared by the hearing officer, after a hearing, to be dangerous.
2. Any dog or other animal declared to be dangerous, if not already impounded by the Animal Control Officer, shall be immediately surrendered to the Animal Control Officer, and it is the duty of the Animal Control Officer to take and impound any such dog or other animal.
3. Any dog or other animal declared to be a dangerous animal shall be humanely destroyed.

E. Dog or Other Animal Found Potentially Dangerous; Procedure. If the Notice of Declaration states that the dog or other animal is potentially dangerous, in the Notice of Declaration the Animal Control Officer may set forth any or all of the following as conditions to owning, possessing, controlling or being in charge of the animal declared to be potentially dangerous:

1. The animal shall be confined on the owner's premises in an enclosure approved by the Animal Control Officer;
2. The animal shall be kept securely muzzled, leashed and under the control of a person eighteen (18) years of age or older, and who is physically capable of restraining the animal when the animal is off the owner's property;
3. The owner shall submit evidence to the Animal Control Officer within 72 hours that the animal has been photographed and microchipped by the owner for purposes of identification;
4. The animal shall be altered to prevent reproduction;
5. The owner of the animal shall notify in writing any public or corporate entity, including but not limited to, the City of Lemoore, County of Kings, the postmaster, utility companies, or any other organization that sends out employees to the residence, that a potentially dangerous animal resides at that property. The Animal Control Officer may also set a time period by which such notices must be given, and when copies of such notices must be provided to the Animal Control Officer;
6. The owner shall post signs on the premises where the animal is being kept that are clearly visible from points of entry to the property which state that an animal which has been declared to be potentially dangerous is on the property. The language of such signs shall be determined by the Animal Control Officer and may be required to be in a language other than English. The Animal Control Officer may require that such signs are posted before an impounded animal is returned to its owner or within ten days from the date the animal was declared to be a potentially dangerous animal;
7. An animal which has been declared potentially dangerous may not be transferred to reside either temporarily or permanently at another location within the City of Lemoore without prior written authorization of the Animal Control Officer. Said authorization shall not

be issued unless every term set forth in the Notice of Declaration can be met at the proposed new location;

8. The owner shall allow inspections of the animal and its enclosure by the Animal Control Officer or any law enforcement agency and produce upon demand proof of compliance with all conditions set forth in the final notice of declaration;

9. In the event of the animal's death, the owner shall notify the Animal Control Officer within forty-eight hours and, upon request, produce evidence of the animal's death;

10. In the event that the animal escapes, the owner shall immediately notify the Animal Control Officer. In addition, the owner and Animal Control Officer shall make every reasonable effort to recapture the animal;

11. The animal shall be permanently removed from the City of Lemoore and the owner shall provide proof of said removal to the satisfaction of the Animal Control Officer; and,

12. The owner shall pay all impound and shelter fees incurred by the Animal Control Officer to impound the animal during the investigation to determine whether the animal is dangerous or potentially dangerous.

If the owner fails to comply with all of the conditions ordered by the Animal Control Officer or the hearing officer through the appeal process described in this article, the Animal Control Officer shall proceed to impound and destroy or otherwise dispose of the animal.

F. Appeal of Notice of Declaration.

1. The owner of the animal may appeal the Notice of Declaration by filing a written appeal with the City Clerk within five days from the date of service of such notice. The written appeal shall contain all of the following:

(i) a brief statement setting forth the legal interest of each of the appellants regarding the animal involved in the notice of declaration;

(ii) a brief statement in ordinary and concise language of the relief sought, and the reasons why it is claimed the protested notice of declaration should be reversed, modified, or otherwise set aside;

(iii) The signatures of all parties named as appellants and their official mailing addresses, with statement from each appellant that each agrees to accept service of the written notice of the time and place of the appeal hearing and the decision of the City Hearing Officer at such address; and,

(iv) the declaration under penalty of perjury of at least one appellant as to the truth of the matters stated in the appeal.

If the owner fails to file an appeal of the notice of declaration within five days of service of the notice of declaration, the notice of declaration shall become final and fully enforceable.

2. An owner appealing a notice of declaration finding an animal dangerous or potentially dangerous shall be required to pay the office of the City Hearing Officer, at the

time the written notice of appeal is filed, an appeal fee set forth in the Master Users Resolution. Such fee shall be refunded to the appellant if the Hearing Officer determines that imposition of the fee is not warranted or is not in the interest of justice. No notice of appeal is valid unless accompanied by the appeal fee.

3. If an appeal is filed, the appeal hearing shall be noticed and conducted under this section and the City's Administrative Hearing Procedures Ordinance.

G. **Limitation on Ownership.** Any person whose dog or other animal has been declared dangerous or potentially dangerous shall not own, possess, control or be in charge of another animal of the species declared to be dangerous or potentially dangerous for a period of three years from the date of the final notice of declaration of order after appeal. The Controller shall not issue or renew any license or permit for said species of animal, except that upon the written request of the person whose dog or other animal has been declared dangerous or potentially dangerous, the Animal Control Officer may in his discretion authorize the issuance of a dog license.

H. **Exceptions.** No dog or other animal may be declared dangerous that inflicts injury or damage on a person committing a willful trespass or other tort upon premises occupied by the owner of the dog or other animal, or teasing, tormenting, abusing or assaulting the dog or other animal, or committing or attempting to commit a crime.

No dog or other animal may be declared dangerous if it inflicts injury or damage on a domestic animal that was teasing, tormenting, abusing or assaulting the dog or other animal.

No dog or other animal may be declared dangerous for taking any action to defend or protect a human being within the immediate vicinity of the dog or other animal from an unjustified attack or assault.

SECTION 8. Section 5-1-60 is added to the Code to read:

5-1-60: PUBLIC NUISANCE: [New section]

The Council finds that dangerous animals and potentially dangerous animals are a public nuisance because of the potential threats to the public's health, safety and welfare resulting from these animals attacking, biting, injuring or killing other persons or animals

SECTION 9. Section 5-60 is added to the Code to read:

5-1-61: ANIMALS AT LARGE; BITING OR ATTACKING ANIMAL: [New section]

A person who owns or is in charge of or controls or who possesses a dog or other animal, other than a dog used in law enforcement or a guide, signal, or service dog, who permits, allows or causes the dog or other animal to be at large is guilty of a misdemeanor if said dog or other animal bites, attacks or causes injury to any human being or other animal. The minimum fine imposed for such misdemeanor shall be one hundred dollars. Any person convicted under this section shall not own, possess, control or be in charge of any animal of the species which caused the bite, attack or injury for a period of three years from the date of conviction. The Controller shall not issue or renew any license or permit for said species of animal, except that upon the written request of the person so convicted, the Controller, in his discretion, may authorize the issuance of a dog license.

SECTION 10. The City Clerk is authorized and directed to cause this ordinance or a summary of this ordinance to be published in a newspaper of general circulation published and circulated by the City of Lemoore, within 15 days after its adoption. If a summary of the ordinance is published, then the City Clerk shall cause a certified copy of the full text of the proposed ordinance to be posted in the office of the City Clerk at least five days prior to the May 15, 2007 meeting at which the ordinance is adopted and again after the meeting at which the ordinance is adopted. The summary shall become effective 30 days after its adoption.

* * * * *

The foregoing ordinance was introduced at a regular meeting of the City Council of the City of Lemoore held May 15, 2007, and was passed and adopted at a regular meeting of the City Council held in _____ by the following roll call vote:

Ayes:

Noes:

Absent:

Abstain:

Approved:

John F. Murray, Mayor

Attest:

Nanci C. O. Lima, City Clerk

CERTIFICATE

STATE OF CALIFORNIA)

COUNTY OF KINGS)

CITY OF LEMOORE)

I, Nanci C. O. Lima, City Clerk of the City of Lemoore, do hereby certify the foregoing Ordinance was duly introduced at a Regular Meeting of the city Council of the City of Lemoore held on the 1st day of May, 2007 an passed and adopted at a Regular Meeting of the City Council held on the _____ day of _____, 2007.

DATED: May ____, 2007

Nanci C. O. Lima, City Clerk

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