

Following was presented:

ORDINANCE NO. 2009-2

WHEREAS, the City of Hamilton (hereinafter referred to as the "City") is empowered to enact ordinances to protect and to promote the general health and welfare of its citizens and is specifically empowered to regulate and prevent the running at large of dogs or other animals, to provide for the safe and proper confinement of vicious dogs and to regulate and prevent cruelty and inhumane treatment to dogs and cats; the City does hereby ascertain and declare the following ordinance is necessary and proper to preserve the health, promote the prosperity and improve

order, comfort and convenience of the inhabitants of the municipality; and,

WHEREAS, the governing body of the City of Hamilton does hereby find and declare that allowing dogs to run at large and not be confined to the premises of the person having charge over such dog and or the premises on which such dog or dogs are regularly kept; that allowing vicious dogs to run at large and not be securely confined indoors or in a securely enclosed and locked pen or structure; and that allowing cruel and harsh treatment to dogs and cats is a concern to the citizens of Hamilton and, due to the growth and development of the City, has become a nuisance and it is the desire of the governing body of the City to enact an ordinance to address and attempt to alleviate this concern; and,

WHEREAS, requiring that every person owning or having charge of any dog or dogs to, at all times, confine such dog or dogs to the limits of his/her own premises or the premises on which such dog or dogs is or are regularly kept; that requiring every person owning or having charge of a vicious dog to properly confine said dog and that regulating cruelty to dogs and cats is not an undue burden or hardship and will promote order and protect the general health and welfare of the citizens of Hamilton.

NOW, THEREFORE, for the foregoing purposes, and other legitimate purposes, BE IT ORDAINED BY THE CITY OF HAMILTON, ALABAMA, THROUGH ITS DULY ELECTED COUNCIL, as follows:

ARTICLE I: PROHIBITING ALL PERSONS HAVING CHARGE OF ANY DOG FROM ALLOWING OR PERMITTING SAID DOG TO RUN AT LARGE AND REQUIRING ALL SUCH DOGS TO THE LIMITS OF SUCH PERSONS OWN PREMISES OR THE PREMISES ON WHICH SUCH DOG OR DOGS IS OR ARE REGULARLY KEPT AND ESTABLISHING THE PENALTY OF VIOLATIONS OF THIS ARTICLE.

SECTION 1: Every person owning or having in charge any dog or dogs shall at all times confine such dog or dogs to the limits of his own premises or the premises on which such dog or dogs is or are regularly kept. Nothing in this section shall prevent the owner of any dog or dogs or other person or persons having such dog or dogs in his or their charge from allowing such dog or dogs to accompany such owner or other person or persons elsewhere than on the premises on which such dog or dogs is or are regularly kept, provided such person or persons owning or having charge over any dog or dogs shall, at all times, keep control over such dog or dogs through the use of a leash or harness or through other means sufficient to keep the dog or dogs within the premises of the person or persons owning or having charge over such dog or dogs.

**SECTION 2:** Nothing in this section shall be construed to limit or affect, in any manner, the use or keeping of guide dogs accompanying a blind person nor shall it affect or limit the use of official police dogs or search dogs.

**SECTION 3:** If any person has a claim pursuant to this Article, then that person shall file a formal written complaint with the Hamilton Municipal Court Clerk and/or the Hamilton Police Department.

**SECTION 4:** Any person, firm, corporation, partnership or other entity found to be in violation of any provision of this Article shall be guilty of a misdemeanor and shall, upon conviction, be punished by a fine of not less than ten (\$10.00) dollars and not more than fifty (\$50.00) dollars.

**ARTICLE II: PROHIBITING ALL PERSONS HAVING CHARGE OF ANY VICIOUS DOG FROM ALLOWING OR PERMITTING SAID DOG TO RUN AT LARGE AND REQUIRING ALL SUCH DOGS TO BE CONFINED IN A SECURE MANNER AND ESTABLISHING THE PENALTY OF VIOLATIONS OF THIS ARTICLE.**

**SECTION 1: Definition of terms.** As used in this Article:

a. "Owner" means any person, firm, corporation, organization or department possessing or harboring or having the care or custody of a dog.

b. "Vicious Dog" means:

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; or

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 would constitute a danger to human life or property if it were not kept in the manner required by this ordinance; or

3. Any dog which, without provocation, attacks or bites, or has attacked or bitten, a human being or domestic animal; or

4. Any dog owned or harbored primarily or in part for the purpose of dog fighting, or any dog trained for dog fighting.

c. A vicious dog is "unconfined" if the dog is not securely confined indoors or confined in a securely enclosed and locked pen or structure upon the premises of the owner of the dog. The pen or structure must have secure sides and a secure top attached to the sides. If the pen or structure has no bottom secured to the sides, the sides must be embedded into the ground no less than one foot. All such pens or structures must be adequately lighted and kept in a clean and sanitary condition.

**SECTION 2: Confinement.** The owner of a vicious dog shall not suffer or permit the dog to go unconfined.

**SECTION 3: Leash and Muzzle.** The owner of a vicious dog shall not suffer or permit the dog to go beyond the premises of the owner unless the dog is securely muzzled and restrained by a chain or leash, and under the physical restraint of a person. The muzzle shall be made in a manner that will not cause injury to the dog or interfere with its vision or respiration, but shall prevent it from biting any human or animal.

**SECTION 4: Signs.** The owner of a vicious dog shall display in a prominent place on his or her premises a clearly visible warning sign indicating that there is a vicious dog on the premises. A similar sign is required to be posted on the pen or kennel of the animal.

**SECTION 5: Dog Fighting.** No person, firm, corporation, organization or department shall possess or harbor or maintain care or custody of any dog for the purpose of dog fighting, or train torment, badger, bait or use any dog for the purpose of causing or encouraging the dog to attack human beings or domestic animals.

**SECTION 6: Penalties.** Whoever violates any provision of this ordinance shall be guilty of a gross misdemeanor and may be punished by a fine of not less than \$100.00 and not more than \$500.00, or imprisonment of not more than 90 days in jail, or by both fine and imprisonment.

**ARTICLE III: PROHIBITING CRUEL TREATMENT OF DOGS AND CATS AND ESTABLISHING THE PENALTY OF VIOLATIONS OF THIS ARTICLE.**

**SECTION 1. Definition of Terms.** As used in this Article:

a. The word "cruel" as used in this Article shall mean: Every act, omission, or neglect, including abandonment, where unnecessary or unjustifiable pain or suffering, including abandonment, is caused or where unnecessary pain or suffering is allowed to continue.

b. The words "dog or cat" as used in this Article shall mean any domesticated member of the dog or cat family.

**SECTION 2.** In a cruel manner, a person shall not overload, overdrive, deprive of necessary sustenance or shelter, unnecessarily or cruelly beat, injure, mutilate, or cause the same to be done, to a dog or cat.

**SECTION 3.** Upon an alleged violation of this Article, the City of Hamilton may appoint one or more trained agents to inspect the allegations of violations of this Article, to protect dogs or cats from any cruelty charged, and to prevent any cruelty to any dog or cat. Any appointment made pursuant to this section shall be made at a meeting of the local governing body duly called with notice.

SECTION 4. Any law enforcement officer and any agent of the municipality appointed pursuant to this Article, having reasonable belief, evidence of, or having found a dog or cat to be neglected or cruelly treated may perform either of the following:

a. Remove the dog or cat from its present location.

b. Order the owner of the dog or cat to provide certain care to the dog or cat at the owner's expense without the removal of the dog or cat from its present location.

Neither the City of Hamilton, nor any employee or agent of the City of Hamilton, acting in good faith, shall be liable for any actions taken under this section regardless of whether or not the dog or cat is returned to its owner after impoundment.

SECTION 5. The law enforcement officer or any agent of the City of Hamilton, without the requirement of any fee or charge for court costs, shall immediately petition the municipal court for a hearing to be set within 20 days of seizure of the dog or cat or issuance of the order to provide care. The hearing shall be held not more than 10 days after the setting of the date to determine whether the owner, if known, is able to provide adequately and protectively for the dog or cat and is fit to have custody of the dog or cat. The hearing shall be concluded and the



court order entered within 30 days after the date the hearing is commenced.

The owner, at least five days prior to holding such a hearing, shall be notified of the date of the hearing to determine if the owner is able to provide adequately and protectively for the dog or cat and is fit to have custody of the dog or cat.

**SECTION 6.** The law enforcement officer or agent of the City of Hamilton may provide for the dog or cat until either the dog or cat is returned to the owner by the court, or the court refuses to return the dog or cat to the owner and implements one of the procedures pursuant to this Article.

If the owner is adjudged by the court, with certification from a licensed veterinarian, to be able to provide adequately for and have custody of the dog or cat, the dog or cat shall be returned to the owner.

If the court determines that the owner of the dog or cat is unable, unwilling, or unfit to adequately provide for, protect, and have custody of the dog or cat, the court may implement the following by court order:

a. Upon the testimony of the person taking custody, a licensed veterinarian, or another qualified witness that the dog or cat requires destruction or other disposition for humane

reasons or is of no commercial value, order the dog or cat destroyed or remanded directly to the custody of the dog or cat control, humane shelter, or similar facility designated by the City of Hamilton or other appropriate person to be disposed of by the facility or person in a humane manner, whether it be by sale, adoption, destruction or other humane dispositions.

b. Upon proof of the costs incurred by the agent or agency having custody of the dog or cat, order that the owner pay any costs incurred for the care of the dog or cat and for any costs incurred in destroying the dog or cat. A separate hearing may be held by the judge of the municipal court on the assessment of costs, which assessment shall include all costs of notice and hearing. In the event the court finds the owner innocent of charges, the owner shall not be charged with costs of the care of the dog or cat in custody.

If the court determines that the owner is unable, unwilling, or unfit to adequately provide for and protect any other dog or cat in the custody of the owner that was not originally seized by the agency, agent, or other person when the dog or cat in custody was seized, the court may enjoin the owner of further possession or custody of the unseized dog or cat.

**SECTION 7.** This Article shall not apply to any of the following persons or institutions:

a. Academic and research enterprises that use dogs or cats for medical or pharmaceutical research or testing.

b. Any owner of a dog or cat who euthanizes the dog or cat for humane purposes.

c. Any person who kills a dog or cat found outside of the owned or rented property of the owner or custodian of the dog or cat when the dog or cat threatens immediate physical injury or is causing physical injury to any person, animal, bird, or silvicultural or agricultural industry.

d. Any person who shoots a dog or cat with a BB gun not capable of inflicting serious injury when the dog or cat is defecating or urinating on the person's property.

e. A person who uses a training device, anti-bark collar, or an invisible fence on his or her own dog or cat or with permission of the owner.

**SECTION 8.** This Article shall not be construed to repeal other criminal laws. Whenever conduct prescribed by any provision of this Article is also prescribed by any other provision of law, the provision which carries the more serious penalty shall be applied.

**SECTION 9. Penalties.** Whoever violates any provision of this ordinance shall be guilty of a gross misdemeanor and

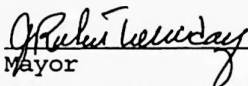
may be punished by a fine of not less than \$100.00 and not more than \$1000.00, or imprisonment of not more than six months in jail, or by both fine and imprisonment.

ARTICLE IV. IF ANY ARTICLE, SECTION, SENTENCE, CLAUSE, PHRASE, OR PART OF THIS ORDINANCE IS FOR ANY REASON DECLARED TO BE UNCONSTITUTIONAL BY THE VALID JUDGMENT OR DECREE OF A COURT OF COMPETENT JURISDICTIONS, SUCH DECISION SHALL NOT AFFECT ANY REMAINING ARTICLES, SECTIONS, SENTENCES, CLAUSES, PHRASES, OR PARTS OF THIS ORDINANCE.

ARTICLE V. THIS ORDINANCE ADOPTS THE PRINCIPLES OF CRIMINAL LIABILITY AS EXPRESSED IN THE CODE OF ALABAMA, AND AS AMENDED FROM TIME TO TIME.

ARTICLE VI. THIS ORDINANCE SHALL BE IN FORCE AND EFFECT FROM AND AFTER ITS ADOPTION AND PUBLICATION.

ADOPTED and ORDAINED this the 2<sup>nd</sup> day of February, 2009.

  
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Mayor

Attest:

  
\_\_\_\_\_  
City Clerk

I, Jan Williams, City Clerk of the City of Hamilton, certify that the foregoing Ordinance No. 2009-2 is a true and correct copy of that certain Ordinance adopted by the City of Hamilton, on this the 2<sup>nd</sup> day of February, 2009.

WITNESS, my hand this 2<sup>nd</sup> day of February, 2009,

2009.

(SEAL)

Jon Williams

(CITY CLERK)

Scotty Sanderson made a motion that Ordinance #2009-2 be approved for passage. McDavid Franks seconded the motion which passed unanimously.

At this time Hytower Lewis addressed the Council about preservation of historical landmarks in Marion County. He also talked about a previous watershed project for the Buttahatchee River that former Speaker of the House Rankin Fite had tried to get developed several years ago. He urged the Mayor and City Council to contact our local and United States legislators, and to work with the Marion County Commission on getting the Watershed developed.

John Berryhill also addressed the Council stating that the Watershed Project would protect the Indian Mounds, which are located next to the Buttahatchee River in the city limits of Hamilton. He said the Watershed would be a great opportunity to control the flow of the River.

There being no further business, McDavid Franks motioned that the meeting be adjourned. April Steele seconded the motion, following a unanimous vote in favor Mayor Holliday declared the meeting adjourned.

John Holliday  
Mayor

Jon Williams  
City Clerk

Council:

Arnold Sherry  
Paul Steadman  
McDavid R Franks  
April Steele  
Scotty Sanderson