

ORDINANCE NUMBER 5 (2008)

**AN ORDINANCE AMENDING THE TOWN OF ECKLEY'S
ORDINANCE NO. 3 (1988) PERTAINING TO ANIMAL CONTROL**

BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF ECKLEY:

Section 1: Section 13 of Ordinance No. 3 (1988) pertaining to animal control is hereby amended by the addition of Paragraph C. as follows:

- C. Impoundment of Fierce, Vicious, Aggressive or Dangerous Dogs. Upon the citation of an owner for a violation of Section 15 hereof, the Code Enforcement Officer or law enforcement personnel shall take into custody the owner's dog and place the dog in the pound or other suitable place at the owner's expense pending final disposition of the charge against the owner. The dog shall remain impounded unless otherwise ordered released by the Municipal Court. The owner shall be liable for the total cost of board and care for the dog. The Municipal Court shall order any convicted owner or any owner who entered into a deferred judgment or deferred prosecution to make payment to the pound or other shelter boarding the dog for all impoundment fees, boarding costs, and any reasonable and necessary medical expenses incurred during the impoundment of the dog.

Section 2: The following Sections of Ordinance No. 3 (1988) pertaining to animal control are hereby amended and restated in each section's entirety as follows:

Section 15: Fierce, Vicious, Aggressive or Dangerous Dogs.

- A. Defined. "Fierce, vicious, aggressive or dangerous dog" shall mean, any dog that, without intentional provocation, bites or attacks humans or other animals, or in a fierce, vicious, aggressive, dangerous or in a terrorizing manner approaches any person or other animal in an apparent attitude of attack, whether or not the attack is consummated or capable of being consummated.
- B. Confinement. No fierce, vicious, aggressive or dangerous dog shall be kept or harbored unless such dog is confined in a building or enclosure designed to be escape-proof on the owner's property. At all times when the fierce, vicious, aggressive or dangerous dog is off of the property of the owner, the dog shall be muzzled and either placed within a secure temporary enclosure, or secured by a leash of no longer than four (4) feet in length held by a responsible adult, who is physically capable of controlling the dog. Extension style leashes shall not be used. The dog may not be leashed to any inanimate object.
- C. Impoundment. Upon the citation of an owner for a violation of this Section 15, the dog shall be impounded pursuant to Section 13.C. of this Ordinance.

However, nothing in this Section 15 shall be construed to prevent the immediate destruction of any fierce, vicious, aggressive or dangerous dog when deemed necessary in the interest of public safety by the Code Enforcement Officer or any other law enforcement personnel when less drastic methods, such as tranquilizing, are not available or effective and when neither the Code Enforcement Officer, law enforcement personnel, nor the dog's owner, if immediately available, is unable to restrain or control the dog so that it might be impounded pursuant to Section 13.C.

- D. Affirmative Defense. It shall be an affirmative defense to prosecution under this Section 15 if:
1. The dog is under the control of law enforcement personnel; or
 2. The actual or intended victim of any attack has made an unlawful entry into the dwelling of the dog's owner or threatened or attacked an owner of the dog.
- E. State Law. In addition to the provisions set forth in this Section 15, owners of dangerous dogs shall remain subject to the provisions of Section 18-9-204.5, C.R.S., as may be amended, regarding the unlawful ownership of dangerous dogs, as such term is defined therein, and shall be cited for any offenses committed thereunder and prosecuted in accordance with State law.

Section 20: Any person found guilty of violating this ordinance or any part thereof shall be punished upon the First Conviction by a fine of not less than \$50.00 or more than \$75.00, and on a Second Conviction shall be punished by a fine of not less than \$75.00 and more than \$100.00, and upon a Third Conviction or subsequent convictions shall be punished by a fine of not less than \$100.00 or more than \$150.00, or up to 90 days in jail, or both. In addition to the penalties set forth in this Section 20, if an owner is convicted for a violation of Section 15 hereof, the Municipal Court may order that the fierce, vicious, aggressive or dangerous dog be humanely destroyed by lethal injection or permanently removed from the Town's limits unless the Municipal Court finds, by a preponderance of the evidence, that there exists reasonable assurance that the dog can be safely maintained, cared for and controlled without danger to the community or that the dog does not create a nuisance to the surrounding neighbors or community. In determining whether the dog can be safely maintained, cared for and controlled by its owner, the Municipal Court shall consider all relevant and reliable evidence, whether or not the evidence is admissible at trial, including, without limitation, pre-bite or post-bite behavior indicative of vicious, aggressive or dangerous tendencies regardless of impoundment status; however, the mere absence of other instances of post-bite vicious, aggressive or dangerous behavior, regardless of impoundment status, shall not be sufficient to support a finding in favor or release.

Section 3: Except as otherwise provided herein, all other Sections of Ordinance No. 3 (1988) shall remain in full force and effect as written.

Section 4: The adoption of this ordinance is necessary for the immediate preservation of public safety for the Town of Eckley, and shall be effective upon adoption.

Introduced, read and ordered published this 4 day of November, 2008.

Published, passed and approved this 2 day of December, 2008.

TOWN OF ECKLEY

By: Michael Leerar, Mayor



ATTEST:


Carolyn J. Copley
Town Clerk-Treasurer