

ORDINANCE BILL NO. 5 FOR 1988

ORDINANCE NO. 975

AN ORDINANCE PROVIDING FOR THE CONTROL OF WILD, EXOTIC OR DANGEROUS ANIMALS; AND DECLARING AN EMERGENCY.

Section 1. DEFINITIONS. As used in this ordinance, except where context otherwise requires:

(a) "Custodian" means any person who is not an owner of an animal, but who has custody of, harbors (providing either shelter or food or both), or exercises effective control over such animal.

(b) "Exotic, wild or dangerous animal" has the meaning given in Section 2.

(c) "Owner" means any person who exercises possessory rights over any animal.

Section 2. EXOTIC, WILD OR DANGEROUS ANIMALS. Definition:

(a) For the purposes of this ordinance, exotic, wild, or dangerous animals means and includes any animal, which because of its size, vicious nature, poisonous bite or sting, or other characteristic would constitute a danger to human safety or property.

(b) Exotic, wild, or dangerous animal includes, but is not limited to:

(1) Any cat other than of the species *Felis Catus* (domestic cat);

(2) Any nonhuman primate;

(3) Any wolf, coyote, or other canine not of the species *Canis Familiaris* (domestic dog);

(4) Any shark, dogfish, or similar carnivorous fishes;

(5) Any piranha fish;

(6) Any poisonous reptile, any crocodilian (includes alligator) or lizard that is greater than two feet in length, or whose average adult length is greater than two feet, any snake that is greater than six feet or whose average adult length is greater than six feet, or any snapping turtle;

- (7) Any bat;
- (8) Any skunk, weasel, badger, fox, mammals of the racoon family, or wolverine.
- (9) Any boar or wild pig;
- (10) Any bear;
- (11) Any kangaroo;
- (12) Any eagle, hawk, buzzard, or similar predatory bird;
- (13) Any poisonous or stinging insect or arachnid.

Section 3. OFFENSE AND NUISANCE. Except as provided in this ordinance, it shall be unlawful for any person to keep or maintain one or more exotic, wild, or dangerous animal within the corporate limits of the City of Sweet Home.

It is further hereby declared that the keeping or maintenance of such an exotic, wild, or dangerous animal is a public nuisance and said nuisance shall be dealt with as set forth in this ordinance.

Section 4. CERTAIN ANIMALS EXEMPT. Notwithstanding the provisions of Section 3, but subject to any other applicable sections of this ordinance and any applicable federal or state law in effect at the time of an alleged offense, if an animal is not identified as an exotic, wild, or dangerous animal in Section 2(b), then a person may lawfully keep or maintain such animal, subject to the provisions of any other applicable Sweet Home Ordinance if such animal is:

- (a) Of the species Felis Catus (domestic cat);
- (b) Of the species Canis Familiaris (domestic dog);
- (c) A fish kept in a tank;
- (d) Any nonpoisonous reptile;
- (e) A gerbil, hamster, guinea pig, mouse, rat, squirrel, chipmunk, or similar rodent-like creature kept in a cage;
- (f) Any amphibian less than one foot in length, such as a frog, toad, salamander, or chamaeleon;
- (g) Any livestock;
- (h) Any rabbit kept in a cage or hutch;

- (i) Any bees kept in a collection of hives or colonies;
- (j) Ant farm.

Section 5. EXCEPTIONS TO PROVISIONS.

(a) The provisions of Sections 3 and 4 shall not apply to the keeping of exotic, wild or dangerous animals in the following cases:

(1) The keeping of such animals in zoos, bonafide educational or medical institutions, museums, or any other place where they are kept as live specimens for the public to view or for the purposes of instruction or study.

(2) The keeping of such animals for exhibition to the public of such animals by a circus, carnival, or other exhibit or show.

(3) The keeping of such animals in a bonafide, licensed veterinary hospital for treatment.

(4) The keeping of a non-human primate that is less than 20 pounds or whose average adult weight is less than 20 pounds and is used and kept as a bonafide medical "assistant" to a disabled person, with prior approval of the City Manager who shall consider such request after finding that the animal is a bonafide medical "assistant," can be housed in a safe and proper manner, and will not be a danger to the public. Said approval and conditions shall be reviewed by the City at least once a year.

(b) The institution or persons keeping or maintaining exotic, wild, or dangerous animals in conformity with subsection (a) of this section shall nevertheless comply with all federal and state regulations regarding such maintenance.

Section 6. ABATEMENT OF EXOTIC, WILD, OR DANGEROUS ANIMAL NUISANCE.

(a) Upon receiving information that an exotic, wild, or dangerous animal is being kept within the City in violation of the provisions of this ordinance, the Chief of Police, any police or animal control officer, the City Attorney, or Assistant City Attorney, may file with the Municipal Judge a petition supported by affidavit setting forth such information, requesting a warrant to impound such animal. If he is satisfied that there is probable cause to believe that such nuisance exists, the Municipal Judge may issue a warrnant directing the Chief of Police or any police or animal control officer to impound the animal pending further order of the Court as provided in this section.

(b) The person executing a warrant issued pursuant to subsection (a) of this section shall have all powers of a police officer in executing a search warrant pursuant to ORS Chapter 133; provided, however, that if forcible entry into a building or vehicle is necessary because of a refusal of the person in possession thereof to consent to entry, or because of the inability of the person or persons attempting to execute the warrant to contact anyone having authority to consent to such entry after at least three attempts more than five hours apart, a regular police officer shall execute the warrant. In the event a police officer, with or without an impoundment warrant, reasonably believes that delay to contact a person having authority to permit entry into a building or vehicle will endanger the health or safety of the public or any person because of the inherently dangerous character of the particular animal and the reasonable potential for such harm, or because it may be infected with rabies and has bitten or scratched a person, he may forcibly enter the building or vehicle for the purpose of impounding the animal.

(c) Upon impounding an animal pursuant to this section the City shall give notice of such impoundment by personal service or by mail to the owner or custodian of the animal, if known, or otherwise to the record owner of the building, vehicle or other premises from which the animal was taken. If the animal was found running at large, and the identity of the owner or custodian is unknown, and cannot be found, the animal shall be disposed of by Order of the Municipal Court. In the event the identity of the owner or custodian becomes known prior to disposition of the animal, the City Attorney shall cause notice thereof to be given to the Municipal Court, and the Court shall proceed as provided in subsection (d) of this section. Notice of impoundment pursuant to this section shall specify the animal's description, the time and place of impoundment, and the rights of the owner or custodian as provided in subsection (d) of this section. Proof of such service shall be filed with the Municipal Judge within 24 hours (Saturday, Sundays, and city holidays excepted) of the impoundment.

(d) Within two weeks of filing proof of such service, the Municipal Judge shall convene a hearing to determine disposition of the animal, unless the owner shall have filed with the Court a written waiver of interest in the animal. In the latter case, the Judge shall order the animal disposed of; otherwise, the Court shall cause notice of the time and place of hearing to be served personally or by mail upon the owner, if known, or upon the person to whom notice of impoundment was given.

(e) Upon a determination that the impounded animal is a wild, exotic, or dangerous animal kept in violation of this ordinance, the Court may order disposition of the

animal, including destruction of the animal or permanent removal of the animal from the corporate limits of the City; provided, however, that if the owner or custodian was charged with a violation of this ordinance, and the trial on the infraction was not consolidated with the hearing provided for in this section, the Municipal Judge shall not order final disposition of the animal, but may order the animal kept in impound pending a judgment on that infraction.

(f) The Court may, as part of any Order, provide for the reimbursement of any costs and expenses incurred by the City in the process of abating the nuisance and the impoundment of the animal.

(g) Nothing in this section shall be deemed to affect, limit, or impair the authority or duty of any public officer or other person pursuant to ORS 433.340 to 433.390, or rules promulgated thereunder.

#### Section 7. ENFORCEMENT.

(a) Upon a conviction of an owner or custodian for violation of the provisions of this ordinance, the Municipal Judge may, in addition to imposing a fine for the infraction and assessing costs for abatement and impoundment, if any, order such disposition of the animal as he deems just and equitable. This Order may require abatement of the nuisance and destruction of the animal, or permanent removal of the animal from the corporate limits of the City.

(b) Failure to comply with the terms of any Order of the Court shall be deemed contempt of Court, and upon such failure the Court may, in addition to penalizing the contempt, modify its Order to require more effective abatement of the nuisance.

Section 8. PENALTIES. Violation of any provision of this ordinance constitutes an infraction and shall be prosecuted under the provisions of Ordinance No. 876, and any amendments thereto.

Section 9. REMEDIES. The remedies, which include penalties herein, provided for in this ordinance or sections thereof, shall be cumulative and not exclusive and shall be in addition to any and all other remedies available to the City.

Section 10. INTERFERENCE WITH OFFICERS. It shall be unlawful for any person to in any way resist, hinder, delay, impede, or otherwise interfere with, molest, or harm any city employee in the prosecution of his duties or exercise of his authority under the terms of this ordinance. Any person so interfering shall be prosecuted under applicable

criminal laws as they apply to the situation.

Section 11. SEVERABILITY. The sections, subsections, and phrases of this ordinance are severable. The invalidity of any section, subsection or phrase shall not affect the validity of the remaining sections, subsections or phrases.

Section 12. EMERGENCY. It is hereby adjudged and declared that existing conditions are such that this ordinance is necessary for the immediate preservation of the public peace, health and safety, and an emergency is hereby declared to exist and this ordinance shall take effect and be in full force from and after the passage and approval of the mayor.

PASSED by the Council and approved by the Mayor this 12th day of July, 1988.

  
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Mayor

ATTEST:

  
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City Manager and ex-officio City Recorder