

ORDINANCE NO. NS-2151

AN ORDINANCE AMENDING THE BEND CODE BY AMENDING CHAPTER 5.20 ANIMALS

Findings:

- A. Bend Code Chapter 5.20 Animals contains numerous provisions relating to Animals.
- B. A large number of cases in Bend Municipal Court involve animals. Both the Judge and enforcement officers have asked for some changes to the code to clarify the authority of the judge and the scope of the regulations.
- C. The Council agrees that the recommended changes will improve the code.

Based on these findings, the City of Bend ordains as follows:

Section 1. Bend Code Chapter 5.20 is revised to read as shown on the attached Exhibit A.

Section 2. All other provisions of the Bend Code remain unchanged and in effect.

Read for the first time the 6th day of October, 2010.

Read for the second time the 20th day of October, 2010.

Placed upon its passage the 20th day of October, 2010.

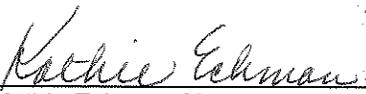
YES: 6 NO: 0 ABSTAIN: 0

Authenticated by the Mayor the 20th day of October, 2010.

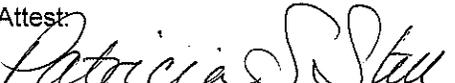
Approved as to form:



Legal Counsel



Kathie Eckman, Mayor

Attest:


Patricia Stell, City of Bend Recorder

CHAPTER 5.20 ANIMALS

5.20.000 Definitions As used in this chapter, the following definitions apply:

- (1) "Animal" means ~~domestic and exotic pets and livestock.~~
- (2) "Dangerous Animal" means any animal that has been found, by the Judge to have:
 - (A) Without provocation, placed a person in reasonable fear of imminent physical injury; or
 - (B) Attacked a person, ~~domestic animal without provocation; or~~
 - (C) Been trained for or used in animal fighting
- (3) "Exotic Pet" means an animal, ~~kept and maintained as a pet excluding dogs and domestic cats.~~
- (4) "Judge" means a Bend Municipal Court Judge, including any pro-tem judges.
- (5) "Keeper" means, in addition to its ordinary meaning, a person, firm, association or corporation which is in possession of, in temporary control of, or who is responsible for the care of an animal. The term "Keeper" also means the parent or guardian of the owner of an animal, if the owner is under the age of 18 years and the owner resides with the parent or guardian on the date of the alleged violation. ~~(6) "Off Leash Area" means an area designated by the Bend City Council pursuant to Section 5.20.030 of the Bend Code as an area where dogs are not required to be leashed.~~
- (7) "Owner" means a person, firm, association or corporation that owns an animal.
- (8) "Physical injury" means impairment of physical condition or substantial pain.
- (9) "Run at Large" means to be off the private premises where the animal is allowed to be by the person in charge of those premises and not under the complete, tethered control of the owner or keeper by adequate leash or bridle. Any animal in a vehicle shall not be considered to be "at large".

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5.20.005 Exemption for Law Enforcement Animals. An animal owned by a law enforcement agency is exempt from the provisions of this Chapter, provided that the animal is under the care and control of a law enforcement officer.

5.20.010 Owner/Keeper Responsibility for Animal. The owner or keeper of an animal which violates the provisions of this chapter is responsible for the animal's acts and condition and the owner or keeper is subject to the penalties provided in Section 5.20.065 for the animal's violations of any provision of this chapter.

5.20.015 Animal Waste. It shall be unlawful for an owner or keeper of an animal ~~other than a domestic cat to allow it to deposit solid waste matter on any property other than the property of the owner or keeper of the animal.~~ It shall be a defense to this action if the owner or keeper of the animal promptly removes the solid waste deposited by the animal.

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5.20.020 Dog Licensing

- (1) Every dog within the city that has a set of permanent canine teeth shall be licensed. The license tag shall be attached to a collar worn by the dog. The owner and/or keeper of the dog shall be found in violation of this ordinance if the dog is not wearing its collar and tag or if the tag is not present on the dog's collar at any time.

- (2) An owner or keeper of a dog within the city shall license the dog not later than 30 days after the person becomes the owner or keeper of the dog or establishes residence within the city.
- (3) Licenses shall not be required for dogs owned by dealers, breeders or exhibitors if the dogs are kept in kennels exclusively for sale or exhibition purposes, or while such dogs are being transported by dealers, breeders, or exhibitors to and from a dog show or fair. Licenses are not required for dogs that are used as service animals for persons with disabilities. A companion or therapy animal is not a service animal unless the animal has been individually trained to perform one or more tasks for a person with disabilities and trained to behave in public.

5.20.025 Animal at Large. No animal other than a domestic cat shall run at large. The owner or keeper of an animal is responsible for an animal at large.

5.20.030 Off Leash Areas.

- (1) The Bend City Council may, in its discretion, designate certain areas of public parks which are owned and operated by the Bend Metropolitan Parks and Recreation District (BMPRD) as areas where dogs are not required to be leashed, subject to the other provisions of this section.
- (2) A designation of an area as an Off Leash Area by the Bend City Council shall not be effective unless the BMPRD Board provides prior written notice to the Bend Chief of Police. Owners must comply with the BMPRD regulations applicable to all off leash areas.
- (3) The owner or keeper of a dog that is in an Off Leash Area must control the dog at all times. The owner or keeper of a dog shall not allow a dog to engage in fighting with other dogs, or harass, bark at, bite, threaten or injure a person or animal.
- (4) If a dog or an owner or keeper is found to be in violation of this section, the dog may be excluded from the Off Leash Area for up to twenty-four hours. If a citation is issued for animal nuisance under Bend Code 5.20.040, the dog shall be excluded from all Off Leash Areas, pending a review of and determination on the citation by the Judge. Returning an animal to an Off Leash Park after being excluded is a Class A civil infraction.
- (5) Animals which have been designated as a Dangerous Animal under Bend Code 5.20.065(4) shall not be permitted in an Off Leash Area under any circumstances.
- (6) Any owner or keeper of a dog shall be subject to a Class A civil penalty for violation of the terms and conditions of an Off Leash Area as provided in this section.

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5.20.035 Dangerous Animals An animal may be designated as a Dangerous Animal by order of the Judge. If an animal is designated as a Dangerous Animal, then the following restrictions shall apply to the animal:

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- (1) The owner or keeper of the dangerous animal shall cause the animal to be confined on the premises of the owner or keeper, either securely indoors or confined in a securely enclosed and locked pen or similar structure; such pen or structure must be securely constructed and must be adequate to ensure the confinement of the animal.
- (2) No owner or keeper of a dangerous animal shall permit the animal to go beyond the premises of the person unless the animal is humanely

muzzled and either securely leashed or otherwise securely restrained and led by a person physically capable of handling the animal.

- (3) A requirement that the animal's owner or keeper post signs on the premises where the animal is kept indicating that the animal is a dangerous animal.
- (4) If the animal designated as a dangerous animal is a dog, then the dog shall at all times be required to wear a special dog tag indicating that the dog is a dangerous animal and will be required to be micro-chipped. The owner shall be responsible for payment for the special tag and microchip.
- (5) Dangerous animals are prohibited in all public parks.

5.20.040 Animal Nuisances

- (1) An animal other than a domestic cat is a nuisance if it;
 - (A) Bites, injures or attacks a person without provocation;
 - (B) Places a person in reasonable fear of imminent physical injury, without provocation;
 - (C) Injures or kills an animal belonging to a person other than the owner or keeper of the animal;
 - (D) Is trained for or used in animal fighting;
 - (E) Disturbs any person by frequent or prolonged noises;
 - (F) Chases vehicles or obstructs traffic;
 - (G) Chases people;
 - (H) Damages property belonging to a person other than the owner or keeper of the animal;
 - (I) Scatters garbage;
 - (J) Attends a special event as defined in Chapter 7.
 - (K) Its owner or keeper has failed to comply with Section 5.20.030(3) or off leash regulations at an Off Leash Area.
- (2) A domestic cat is a nuisance if it:
 - (A) Bites, injures or attacks a person without provocation;
 - (B) Places a person in fear of imminent physical injury, without provocation;
 - (C) Is trained for or used in animal fighting;
 - (D) Disturbs any person by frequent or prolonged noises;
 - (E) Attends a special event as defined in Chapter 7.

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5.20.045 Impound

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- (1) An animal that has violated Bend Code 5.20.025, 5.20.040 or that lacks a required license may be seized and impounded by an officer of the Bend Police Department.
- (2) If an officer of the Bend Police Department is unable to apprehend such animals without risking injury to the officer or other people, the officer may kill the animal if other means to control the animal are ineffective or likely to be.
- (3) An impounded animal shall be placed in the animal shelter under contract with the City of Bend Police Department and shall be held by that animal shelter until the release has been authorized by the Bend Police Department, any citations issued to the animal's owner or keeper have been resolved by the court system or until the shelter has received a court order directing the shelter to release or humanely destroy the animal.

5.20.050 Unclaimed Animals

- (1) If an animal has been impounded and no citations have been issued to an impounded animal's owner or keeper within three business days of the animal's impoundment, the animal may be handled according to Oregon law and the animal shelter's policies, rules and regulations, including humane destruction of the animal.
- (2) If an animal has been impounded and one or more citations have been issued to the animal's owner or keeper, but the animal's owner or keeper does not make a personal or written appearance on the citation(s) in the Bend Municipal Court within the time required by the citation(s), then the Court may issue an order terminating the rights of the owner to the animal and requiring that the animal may be handled according to Oregon law and the animal shelter's policies, rules and regulations, including humane destruction of the animal. Prior to issuing a forfeiture order, the Court shall cause a written notice to be delivered or mailed to the owner or keeper of the animal. The notice shall advise the owner or keeper that the owner or keeper's rights to the impounded animal will be forfeited unless the owner or keeper makes a personal appearance in the Bend Municipal Court within five business days of the date of the notice. The notice shall be mailed or delivered to the owner or keeper of the animal at the address shown on the citation or at any address provided to the Court by the animal's owner or keeper.
- (3) If an animal has been impounded and the owner or keeper of the animal makes a first appearance in the Bend Municipal Court, but the owner or keeper later fails to appear as required by the Municipal Court, then the Court may proceed as provided in Section 5.20.050(2).

5.20.055 Warrant for Seizure of Animals

- (1) Any member of the Bend Police Department, including community service officers, may apply to the Bend Municipal Court for a warrant authorizing the search for and seizure of any animal that has violated Bend Code 5.20.040. The Bend Municipal Court Judge may issue the warrant based on a prima facie case that the violation has occurred.
- (2) Nothing in this section is intended to limit the search and seizure authority of City police officers otherwise provided by law.

5.20.060 Rabid Animals Management and disposition of rabid animals shall be as prescribed by Oregon Law.

5.20.065 Civil Penalties

- (1) The following violation are Class A civil infractions:

- (A) Owning or keeping an animal that is a nuisance under Section 5.20.040.
 - (B) Bend Code 5.20.070 violating an order terminating animal owner's rights.
- (2) All other violations of this Chapter are Class B Civil infractions:
- (3) Reimbursement of Impound Costs. The Bend Municipal Court Judge may order the owner or keeper of an animal that violates any provision of this Chapter to reimburse the City of Bend for any and all impound costs incurred by the City.
- (4) Exclusion from Off Leash Areas. If an animal that is found in violation of the provisions of this Chapter and the violation occurred in an Off Leash Area, the Bend Municipal Court Judge may order that the animal be excluded from all Off Leash Areas.

5.20.070 Destruction of Animals/Termination of Owner Rights

- (1) If an animal has been found to have violated Bend Code 5.20.040(1)(A) or 5.20.040(2)(A), the Judge shall enter an order terminating the animal owner's rights to the animal and/or requiring that the animal be humanely destroyed.
- (2) If an animal has been found to have committed two or more violations of Bend Code 5.20.040(1)(B), (C), or (D) within a five-year period, the Judge shall enter an order terminating the animal owner's rights to the animal and/or requiring that the animal be humanely destroyed.
- (3) The Judge may terminate an animal owner's right to the animal and direct that the animal be placed in an animal shelter for possible adoption and/or prohibit the owner from owning or possessing animals in the City if:
- (A) The Judge determines that an animal's violation of Bend Code 5.20.040 (1)(A), (B), (C) or (D), or Bend Code 5.20.040(2)(A), (B) or (C) was caused by the neglect, abuse or tormenting of the animal by its owner or keeper.
 - (B) The animal or the owner of the animal has committed two or more violations of Bend Code 5.20.040 within a one-year period.
 - (C) In deciding whether to terminate an owner's rights to an animal under this section, the Judge shall consider the extent to which each violation was attributable to an action of the owner.
 - (D) Violation of an order issued under this section is a Class A civil infraction.
- (4) If the Judge determines that an animal is unlikely to be a repeat offender of the provisions of this Chapter, then the Judge may suspend any orders in subsection (1), (2) or (3) for a period of up to five years, subject to conditions, which may include:
- (A) A requirement that neither the animal nor the animal's owner or keeper commit any further violations of this Chapter;
 - (B) A requirement that the animal's owner or keeper pay Court ordered penalties resulting from the animal's violation of this code.
 - (C) A designation of the animal as a Dangerous Animal that is subject to the Dangerous Animal Restrictions described in Bend Code 5.20.035(4).

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(D) A provision that allows law enforcement officers, upon a future violation of Sections 5.20.025, 5.20.035 or 5.20.040 by the animal, to take the animal into custody pending further review and order by the Judge.

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(E) Any other condition that the judge deems appropriate.

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5.20.075 Undertaking on Appeal If an animal has been impounded and the owner or keeper has filed an appeal of an order of the Bend Municipal Court, then the owner or keeper of the animal must provide a bond, deposit or other security to assure payment of the cost incurred by the City for housing the animal pending appeal. The bond, deposit or other security shall be set in an amount not less than the cost of impounding the animal for six months at the rate charged the City by the animal shelter.