

ORDINANCE 2019-_____
ANIMAL CONTROL

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PALM COAST, FLORIDA, AMENDING ARTICLE II – CITY OF PALM COAST ANIMAL CONTROL REGULATIONS, OF CHAPTER 8, ANIMALS, OF THE PALM COAST CODE OF ORDINANCES BY PROVIDING FOR REGULATIONS AS TO THE TETHERING OF ANIMALS; PROVIDING FOR PROCEDURES AND DUTIES RELATING TO THE REPORTING OF POTENTIAL RABIES, AND RELATED QUARANTINE REQUIREMENTS; PROVIDING FOR PROCEDURES RELATING TO ANIMALS FOUND IN DISTRESS; PROVIDING FOR HEARING OFFICER POWERS AND DUTIES RELATING TO ANIMAL CONTROL HEARINGS; PROVIDING FOR DEFINITIONS AND PROCEDURES RELATING TO TRAP-NEUTER-RETURN PROGRAMS AND COMMUNITY CAT MANAGEMENT; PROVIDING A DEFINITION AND RELEVANT PROCEDURES RELATING TO THE REGULATION OF AGGRESSIVE DOGS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Palm Coast, Florida (the “City”) is granted the authority, under Section 2(b), Article VII, of the State Constitution, to exercise any power for municipal purposes, except where expressly prohibited by law; and

WHEREAS, Chapter 8 of the City of Palm Coast City Code provides for animal control regulations; and

WHEREAS, the protection of animals from abuse and neglect continues to be a high priority of the City; and

WHEREAS, the City recognizes the potential harm which may occur from the improper tethering of animals; and

WHEREAS, anti-tethering regulations have been successfully adopted by other communities; and

WHEREAS, in order to further protect the citizens and animals of Palm Coast, the City desires to adopt a procedure for reporting and the quarantine of animals potentially affected by rabies, as well as the duties of animal control officers relating to this public safety concern; and

WHEREAS, the City desires to provide a process consistent with Florida law to protect animals found in distress; and

WHEREAS, the City utilizes the services of a hearing officer/special magistrate (hereinafter “hearing officer”), in accordance with Sections 8-40 and 8-57 of the City Code, to determine whether a violation of Chapter 8, Animals, Article II, Animal Control Regulations, has occurred, including Animal Control hearings relating to dangerous dogs and other matters, in accordance with Chapter 8 of the City Code; and

WHEREAS, the City Council finds that, at times, it is necessary for the hearing officer to issue subpoenas for the production of evidence or the attendance of witnesses to secure evidence or testimony relating to matters within the jurisdiction of the hearing officer; and

WHEREAS, neither the City Code, nor Chapter 767, Florida Statutes, currently establish authority for the hearing officer to subpoena evidence or witnesses; and

WHEREAS, the proliferation of stray and feral cats and feral cat colonies in the City results in recurring expenditures of public funds and resources to trap feral cats, adopt out those that are capable of being socialized, and to potentially euthanize those that are not socialized or that are not adopted; and

WHEREAS, the aforementioned, recurring expenditures of public funds and resources fail to successfully cause permanent removal of stray or feral cats from cat colonies, as the remaining cats continue to reproduce and create the need for further action and expenditures on the part of the City; and

WHEREAS, the City Council finds that the program or practice known as ‘Trap-Neuter-Return’ has the potential to control stray and feral cat population growth while preventing or reducing the euthanasia of the cats, and reducing the expenditure of public funds toward the removal, sheltering and disposition of such cats; and

WHEREAS, the City recognizes the need for innovation in addressing the issues presented by the permanent presence and uncontrolled reproduction of feral, community and other free-roaming cats. To that end it recognizes that there are Community cat caregivers, and acknowledges that Community cats and Community cat colonies, when properly managed and if not creating a nuisance, may be part of the solution to the continuing euthanasia of cats. The City acknowledges that Community cats living in colonies may be tolerated living outdoors, provided such cats are cared for in accordance with this Ordinance.

WHEREAS, the City Code must be amended to implement authority for a Trap-Neuter-Return program; and

WHEREAS, the City Code does not currently address community (feral) cat colonies; and

WHEREAS, addressing Community cat colonies will provide standards and requirements for Community cat caregivers in relation to the health and welfare of the Community cats; and

WHEREAS, the City Council finds that implementing an ordinance addressing Community cat colonies will assist in the identification of Community cat colonies and their caregivers throughout the City, which will improve communications between the City and Community cat caregivers regarding registered Community cat colonies; and

WHEREAS, the City Council finds that addressing the registration of Community cat colonies by ordinance will ensure that private property owners have given explicit permission for the maintenance of a Community cat colony upon their real property; and

WHEREAS, the City Council finds that by requiring the permission of private property owners, and the registration of Community cat colonies and their caregivers, communications with identified people will assist in the coexistence of Community cat colonies with neighboring residents, while also requiring accountability of those maintaining or allowing others to maintain Community cat colonies upon private property; and

WHEREAS, the City Council finds that some Community cats may become a nuisance to nearby residents and that in such instances there should be mechanisms in place for the removal and impoundment of Community cats which are public nuisances; and

WHEREAS, in order to preserve the public peace and good order, and to safeguard the health, safety, and general welfare of the City and its citizens, it is necessary and advisable to amend the City Code to promote responsible pet ownership and provide for penalties and enforcement of aggressive dogs that cause unprovoked injuries to humans or domestic animals; and

WHEREAS, the penalties and enforcement of provisions relating to aggressive dogs are in addition to existing requirements relating to dangerous dogs; and

WHEREAS, the City Council finds that penalties and enforcement of provisions relating to aggressive dogs may further safeguard the City's citizens and domestic animals from dangerous dog attacks by proactively regulating aggressive dogs that cause unprovoked injuries to humans or domestic animals, or even kill domestic animals, yet which do not thereby meet the definition of dangerous dog; and

WHEREAS, the City Council finds that this Ordinance is necessary to protect the health, safety, and welfare of the residents and citizens of Palm Coast; and

WHEREAS, words with double underlined type shall constitute additions to the original text and strike through shall constitute deletions to the original text, and asterisks (***) indicate that text shall remain unchanged from the language existing prior to adoption of this Ordinance.

NOW, THEREFORE, IT IS HEREBY ORDAINED BY THE CITY OF PALM COAST, FLORIDA, AS FOLLOWS:

SECTION 1. LEGISLATIVE AND ADMINISTRATIVE FINDINGS. The above recitals (whereas clauses) are hereby adopted as the legislative and administrative findings of the City Council.

SECTION 2. **Section 8-28** of the Code of Ordinances of the City of Palm Coast, Florida, is hereby amended as follows:

Aggressive dog means any dog that has been designated as aggressive pursuant to Section 8-39.5 of the City Code.

Agricultural working dog means a dog owned by a bona fide agricultural livestock business used for the purpose of herding livestock.

Community cat means a free-roaming cat that exists in an untamed state or that has returned to an untamed state generally not socialized to human contact and is no longer considered domesticated and which may be cared for by a Community cat caregiver or one or more residents of the immediate area who is/are known or unknown; a Community cat may or may not be feral. Community cat shall also mean any free-roaming, unowned cat living in an outdoor environment that may or may not be a part of a cat colony. Community cats shall be subject to the rabies vaccination requirements of Florida law. Community cats are exempt from licensing, stray and at-large provisions of this chapter and may be exempt from other provisions directed toward owned animals.

Community cat caregiver means any person or organization that, in accordance with a good faith effort to humanely trap, neuter, vaccinate and return the Community cat outside in the area it was trapped, provides volunteer care to a Community cat or Community cat colony.

Community cat colony means a group of Community cats that congregate, more or less, together as a unit and share a common food source.

Dog park means an enclosed area designed for dogs to socialize with other dogs, or run without a leash, under the dog owner's supervision.

Ear-tipping shall mean the removal of the distal one-quarter of a Community cat's left ear, which is approximately 3/8-inch, or 1 cm, in an adult and proportionally smaller in a kitten. This procedure is performed under sterile conditions while the cat is under anesthesia, in compliance with any applicable federal or state law, and under the supervision of a licensed veterinarian. Eartips are designed to identify a Community cat as being sterilized and lawfully vaccinated for rabies. If these requirements are met, the ear-tipped cat is exempt from licensing, stray and at-large provisions of this chapter and may be exempt from other provisions directed toward owned animals.

Feral means an untamed domestic animal that is either born wild or has returned to the wild and is unsocialized, untamed, or unable to be approached or handled, or the offspring of such an animal.

Injury means any physical damage done by a dog to a human or domestic animal that does not necessarily rise to the level of a severe injury, but still results from an attack or single bite or scratch, or having been chased in a menacing fashion, and that causes bleeding, bruising or other circumstances that require professional medical treatment.

Public nuisance animal means any animal which meets any one or more of the following criteria:

- (1) An animal that is repeatedly (in excess of two times) found at large.
- (2) An animal that damages, harms or destroys the property of anyone other than their owner. This includes, but is not limited to, turning over garbage containers, spraying with urine, or damaging gardens, landscaping, or other personal property.
- (3) A Community cat that damages, harms or destroys property of anyone other than the owner of a registered Community cat colony location or the registered Community cat caregiver thereof. This includes, but is not limited to, turning over garbage containers, spraying with urine, or damaging gardens, landscaping, or other personal property.
- ~~(3)~~(4) An animal that has been determined to be a dangerous animal that is not confined as required by this Code.
- ~~(4)~~(5) An animal that causes unsanitary conditions of enclosures or surroundings, determined by the animal control officer.
- ~~(5)~~(6) An animal that is a diseased animal and dangerous to human health.
- ~~(6)~~(7) An animal that repeatedly or excessively (in excess of 20 minutes) barks, cries, howls, screeches, squawks, screams, whines or makes other prolonged or disturbing noises interfering with the peace, comfort, repose or quietude of the neighboring properties, providing

the complainant has filed a sworn statement with either a City of Palm Coast animal control officer, a law enforcement officer or a code enforcement officer.

~~(7)~~(8) An animal that has been determined to be a stray.

~~(8)~~(9) An animal that is a female animal that is not confined within a building, structure, cage, or not otherwise kept under restraint during her estrous cycle (in heat), other than Community cats as provided in Section 31.5.

~~(9)~~(10) An animal that is a rabies-susceptible animal that has not been appropriately inoculated against rabies.

~~(10)~~(11) An animal that causes offensive odors from or upon the premises on which the animal is maintained, as to prevent a public nuisance which affects the public health, safety or welfare or livability of adjacent or proximate property

~~(11)~~(12) ~~Chasing~~ Chases vehicles, livestock, domestic animals, or humans ~~or running at large.~~

~~(12)~~(13) ~~Acting~~ Acts in an aggressive manner.

~~(13)~~ ~~Damaging or destroying public or private property exclusive of the owner's property.~~

(14) A Community cat which repeatedly (more than twice) defecates on private property exclusive of the private property upon which a Community cat colony is located.

Sterilization means a procedure performed by a licensed veterinarian upon an animal which renders the animal permanently incapable of reproduction (i.e. spayed or neutered)

Tether shall mean a cord, rope, running line, cable, or chain, or similar restraint, which is used to restrict an animal to a limited area.

Tethered means the restraining of an animal by the means of any type of tether, as defined herein, a rope, chain, or similar restraint for holding an animal in place by tying the animal's tether to any object or structure, allowing a short radius in which the animal can move about and/or does not allow the animal to move outside the bed of an open vehicle. This definition shall not include the use of a leash for the purpose of walking an animal.

(1) *Double tether* means using two tethers attached to an animal which do not allow the animal to move around the inside of the bed of an open vehicle.

(2) *Open vehicle tether system* shall mean a system designed to keep a dog securely attached and restrained in an open vehicle safe and free of hazard and away from the sides of the open vehicle.

Trap-neuter-return (TNR) means humanely trapping, or otherwise obtaining a Community cat, and providing for the sterilization, vaccination against the threat of rabies, and ear-tipping of the cat, followed by return to its original location.

SECTION 3. Section 8-29 of the Code of Ordinances of the City of Palm Coast, Florida,

is hereby amended as follows:

Sec. 8-29. - Animal control officer; powers and duties; unlawful interference.

(a) The City Manager, or designee, shall have supervision of the performance of the duties of the City's animal control officers, who shall have full and complete authority to pick up, catch or procure animals as provided below. The City Manager and animal control officers may capture, seize or pick up:

(1) Any animal at large;

(2) Any domestic animal constituting a nuisance;

~~(3)~~ Any Community cat constituting a public nuisance;

~~(3)~~(4) A dangerous dog or aggressive dog not in compliance with written notification of their classification;

~~(4)~~(5) Any dog being considered for dangerous or aggressive classification;

~~(5)~~(6) Any animal in heat, not properly confined by the owner or keeper;

~~(6)~~(7) Any neglected, abused, cruelly treated, sick or injured animal or animal at risk of injury or death;

~~(7)~~(8) Any animal for the purpose of quarantine or rabies testing;

~~(8)~~(9) Any animal deemed to be abandoned;

~~(9)~~(10) Any animal released to the City by a veterinarian or a law enforcement official;

~~(10)~~(11) Any animal that appears to be unlicensed when required to be licensed.

SECTION 4. Section 8-31.5 of the Code of Ordinances of the City of Palm Coast, Florida,

is hereby created as follows:

Sec. 8-31.5 – Community Cat Management.

(a) It is unlawful for any individual, organization, or group, to intentionally provide food, water, or other forms of sustenance or care to a Community cat unless:

- (1) The person, organization, or group has registered with the animal control authority as a Community cat caregiver; and
- (2) The person, organization, or group has registered the Community cat colony with the animal control authority, and
- (3) The Community cats have been ear-tipped as required by the Trap-Neuter-Return (“TNR”) program or the Community cat caregiver is actively attempting to humanely trap the Community cats in compliance with the TNR program.

(b) Community cat management requirements:

- (1) Managing Community cats on City property or other public property is prohibited.
- (2) All managed Community cat colonies must be maintained either:
 - a. On the private property of the Community cat caregiver(s); or
 - b. On the private property of another landowner, with the express written permission of such landowner.
- (3) The express written permission of a private property owner allowing a Community cat caregiver to maintain a Community cat or Community cat colony upon the private property owner’s parcel shall be notarized and provided to the animal control authority. At a minimum, the following information must be included in the written authorization:
 - a. The private property owner’s name, mailing address and phone number; and
 - b. The authorized Community cat caregiver’s name and phone number; and
 - c. The parcel identification number; and
 - d. The street address, if assigned; and

e. That the private property owner gives the named Community cat caregiver the authority to maintain a Community cat colony upon the owner's identified private property.

- (4) *Community Cat Caregiver registration.* In order to be authorized to manage Community cats within the city, individuals, organizations and groups must register as Community cat caregivers by providing the animal control authority their full names, contact information, and Community cat colonies maintained, including an approximation of the number of cats in the Community cat colony. All individual members of organizations that desire to manage Community cats on behalf of an organization shall provide their individual names, contact information, and Community cat colonies maintained, including an approximation of the number of cats in the Community cat colony. The physical locations of Community cat colonies shall be provided by street address. If no street address is assigned, the parcel identification number shall be provided. If the private property is owned by anyone but the registering Community cat caregiver, express written permission, as enumerated above must be provided to the City.
- (5) Community cat caregivers shall provide certain necessities on a regular and ongoing basis, including, but not limited to, proper nutrition and medical care, as needed.
- (6) Food shall be provided in the proper quantity for the number of Community cats being managed and is to be supplied no less than once per day. Food must be placed in feeding containers that are maintained and secure. Feeding containers must be kept in one place. Uneaten food must be removed. No food may be allowed to remain out overnight.
- (7) Water must be clean, potable, and free from debris and algae.
- (8) Shelter, if provided, shall be unobtrusive, safe, and of the proper size for the Community cat(s).
- (9) *Trap-Neuter-Return.* Trap-Neuter-Return shall be permitted when conducted by the animal control authority, or, Community cat caregivers or Community cat caregiver organizations registered with the City.
- (10) All Community cats that are part of the TNR program must be trapped humanely in a manner that does not harm the animal, sterilized, vaccinated against rabies, preferably with a three (3) year vaccination, vaccinated against any other infectious disease as mandated by law, ear-tipped and then returned to its place of capture. Community cats may not be kept indoors or inside a garage. If these requirements are met the Community cat is exempted from licensing, stray and at-large provisions of this Chapter that apply to owned animals. Community cats are not exempt from public nuisance provisions of the City code. Any Community cat determined by

the animal control authority to be a public nuisance shall be relocated to an alternate suitable outdoor location.

(11) Healthy Community cats that have been impounded by the animal control authority may be immediately returned-to-field, released to a Community cat caregiver, or, if considered sufficiently socialized, adopted. Community cats who have been impounded more than three times by the animal control authority may be relocated or euthanized at the discretion of the animal control authority. Notwithstanding the foregoing, whenever an impounded Community cat is visibly injured or diseased, or is determined to be a public nuisance, appears to be suffering, and upon the advice of a veterinarian of the City's choice, such Community cat cannot be expeditiously cured and returned to an outdoor living environment, or transferred to a rescue group, then the animal control authority may humanely euthanize the Community cat.

(12) Citations or notices of violation relevant to the Community cats or Community cat colonies may issue in the name of either the property owner upon which the Community cat colony is located or the Community cat caregiver(s) thereof, or both.

(c) The City shall not be liable for any injury to any Community cat that may occur while any animal control officer is attempting to capture, transport, load or unload or otherwise process the Community cat. In the event a Community cat is injured or property is damaged, the animal control officer shall file a written report of the circumstances with the City Manager, or designee, within one working day of such incident.

SECTION 5. Section 8-32 of the Code of Ordinances of the City of Palm Coast, Florida,

is hereby amended as follows:

Sec. 8-32. - Cruelty to animals.

(g) *Tethering of animals.* The tethering of animals shall be deemed as animal cruelty unless such tethering is in compliance with all of the following provisions:

(1) An animal which is tethered shall be at least six (6) months of age.

(2) Sick or injured animals shall not be tethered or otherwise housed outside.

- (3) If multiple animals are tethered outside, each animal shall have its own space which does not intersect with another animal's space, so as to avoid tethers from becoming tangled.
- (4) All tethered animals shall, at all times, have access to clean water, shelter, shade and dry ground.
- (5) Animals shall not be tethered outside during inclement weather, which shall include but not be limited to high heat, freezing temperatures, hurricanes, thunderstorms, lightning, tropical storms or tornadoes.
- (6) A tethering system shall not allow the animal to leave the owner's property.
- (7) A tether shall be attached to a properly fitted, properly maintained collar or harness. Choke chains and ropes shall not be used as a part of a tethering system.
- (8) If an animal is to be tethered it must be tethered to a stationary object; not an object that could become mobile, including but not limited to a vehicle. The tethering of animals in an open vehicle for the purposes of transporting the animals is an exception to the requirement of an object being stationary.
- (9) If an animal is tethered near a fence, the animal shall be tethered far enough away from such fence so as to avoid jumping and hanging.
- (10) A tether must be at least ten (10) feet in length or four (4) times the length of the animal from nose to the base of the tail whichever is longer. The tether must be longer if attached to anything that is off the ground which would lessen the moveable area for the animal.
- (11) An animal attached to a fixed point chain or tether which is less than twelve (12) feet in length must be released from that tether for exercise for a minimum of two (2) hours every twenty-four (24)-hour period.
- (12) A tether consisting of chain, leash or wire cable must be of reasonable weight so as not to injure the animal's neck or body.
- (13) A tether shall be secured in such a way that the tether cannot become entangled with other objects.
- (14) Areas where tethered animals are kept shall be cleaned daily. Areas in which an animal is tethered should be changed regularly to avoid health risk to the animal confined to one area where the animals eats, urinates, and defecates.
- (15) Female animals in heat shall be kept in a secured area that prevents male animals from having access to such female animals, except for controlled breeding permitted by the owner of the female animal. Additionally, a female animal shall not be chained or tethered in a manner that prevents her from defending herself or from avoiding a male.

(h) Outdoor shelters. Leaving animals unattended outdoors shall be deemed as animal cruelty unless same is in compliance with all of the all of the following provisions:

- (1) Each animal left unattended outdoors shall be provided with proper outdoor shelter that is suitable for the size, condition and breed of the animal.
- (2) Outdoor shelters must be structurally sound and maintained in good repair to protect animals from injury. They shall have no sharp edges or points.
- (3) Outdoor shelters with wire floors shall be of a small enough mesh as to not allow the animal's feet to fall through the openings. A solid or soft area must be provided as a sleeping area in such outdoor shelter.
- (4) Metal barrels, vehicles and similar objects not intended to be animal shelters shall not constitute proper shelter for an animal.
- (5) Shelters must protect the animal against inclement weather, preserve body heat and allow them to remain dry. Additional bedding material must be provided when temperatures are below fifty (50) degrees.
- (6) Animals shall not be housed outdoors when temperatures fall below freezing.
- (7) A shelter with ventilation shall be provided during the warm months. In addition to the shelter structure, one (1) or more separate areas of shade shall be provided to allow animals to protect themselves when sunlight is likely to cause overheating or discomfort.
- (8) Floors and walls of outdoor shelters must be constructed in such a manner so that they are impervious to moisture and may be readily sanitized. These shelters must be cleaned regularly with the consistent removal of food, waste and debris.

(i) Health care. Failure to comply with the following provisions may be deemed by the City as animal cruelty:

- (1) All animals shall be kept free from external parasites including but not limited to fleas and ticks. Failure by an owner to timely treat an animal experiencing unjustifiable pain or suffering from such external parasites, when having knowledge of such condition, may be deemed as animal cruelty. At a minimum, the owner of an animal shall treat the animal with over-the-counter or prescription products for the animal's condition.
- (2) Animals shall be kept free from internal parasites, including but not limited to hookworms, roundworms, and tapeworms. Failure by an owner to timely treat an animal experiencing unjustifiable pain or suffering from such internal parasites, when having knowledge of such condition, may be deemed as animal cruelty. At a minimum, the owner of an animal shall treat the animal with over-the-counter or prescription products for the animal's condition. Treatment by a licensed veterinarian is recommended for internal parasites.
- (3) Animals shall be examined annually by a licensed veterinarian.
- (4) Animals must be kept up to date on required vaccines.

- (5) Dogs must be kept on heartworm prevention as advised by veterinarian. Cats must be kept on heartworm prevention, especially outdoor cats. If a dog or cat tests positive for heartworm, provisions must be made to treat the heartworm. If treatment is not possible due to financial reasons, other options must be explored to keep the animal as healthy and comfortable as possible.
- (6) Animals that appear weak or unhealthy, as determined by an animal control officer, shall receive veterinary attention.
- (7) Owners shall ensure that their injured animals receive immediate attention. Any severe injuries shall be treated by a veterinarian.

SECTION 6. Section 8-33 of the Code of Ordinances of the City of Palm Coast, Florida,

is hereby amended as follows:

Sec. 8-33. - Neglect/abandonment of animals.

(d) It is prohibited and unlawful for any person to keep any animal in any enclosure or unattended parked vehicle for more than 30 minutes. In the event that prevailing weather conditions are such that the domestic animal is in imminent danger of suffering harm or the life of the animal is in jeopardy, as determined by the animal control officer, then said maximum time limit shall not be applicable. An animal control officer who enters a motor vehicle, by force or otherwise, for the purpose of removing a domestic animal is immune from civil liability for damage to the motor vehicle if the animal control officer:

(1) Determines the motor vehicle is locked or there is otherwise no reasonable method for the domestic animal to exit the motor vehicle without assistance.

(2) Has a good faith and reasonable belief, based upon the known circumstances, that entry into the motor vehicle is necessary because the domestic animal is in imminent danger of suffering harm.

(3) Ensures that law enforcement is notified or 911 called before entering the motor vehicle or immediately thereafter.

(4) Uses no more force to enter the motor vehicle and remove the domestic animal than is necessary.

(5) Remains with the domestic animal in a safe location, in reasonable proximity to the motor vehicle, until law enforcement or other first responder arrives.

In the event that the animal's owner cannot be located after reasonable efforts, as determined by the animal control officer, to find the owner, the animal control officer that removes the domestic animal from the motor vehicle shall transport, or arrange for the transportation of, the domestic animal to a local veterinary facility or animal shelter. Prior to departing from the scene, the animal control officer shall leave, in a conspicuous location in or upon the motor vehicle wherein the

domestic animal was found, the animal control officer's name and contact information, in addition to the name and physical address of the facility where the domestic animal is to be transported. The owner shall be responsible for payment of all boarding costs or other fees as may be required to humanely and safely keep a domestic animal removed in accordance with this section. The domestic animal shall be released to the owner upon proof of ownership and full payment of required boarding costs or other fees. If the domestic animal is not claimed by and released to its owner within five calendar days of the animal's removal from the motor vehicle, the domestic animal shall be deemed as abandoned and may be destroyed in a humane fashion or otherwise adopted, rescued, or fostered out alive in accordance with section 8-49.

SECTION 7. Section 8-39.5 of the Code of Ordinances of the City of Palm Coast, Florida,

is hereby created as follows:

Sec. 8-39.5 - Aggressive dog classification procedures, requirements, owner responsibilities, and penalties.

- (a) As attested to by a witness in a sworn affidavit along with any additional evidence, after an investigation which shall include an interview with the dog's owner, if possible, the animal control authority may declare as Aggressive a dog that does not meet the statutory definition of Dangerous dog, but that has, when unprovoked:
- (1) Caused injury to a human being on public or private property; or
 - (2) Caused injury to or the death of a domestic animal while it is off the dog owner's property;
or
 - (3) Chased or approached a person upon streets, sidewalks, or any public grounds, in a menacing fashion or apparent attitude of attack.
- (b) A dog that is the subject of an aggressive dog investigation because of severe injury to a human being may be immediately confiscated by an animal control authority, placed in quarantine, if necessary, for the proper length of time, or impounded and held. The animal may be held pending the outcome of the investigation and any hearings or appeals related to the aggressive dog classification or any penalty imposed under this section. The owner is responsible for payment of all boarding costs and other fees as may be required to humanely and safely keep the animal pending any hearing or appeal.
- (c) Requirements during aggressive dog investigation. A dog that is the subject of an aggressive dog investigation must be humanely and safely confined by the owner as described in this subsection (c) pending the outcome of the investigation and the resolution of any hearings or litigation related to the aggressive dog classification or any penalty or requirement imposed under this section. The owner must ensure that the dog is securely confined indoors or in a securely fenced or enclosed area from which the dog may not escape (over, under, or through the fence or enclosed area). Electric fences do not meet the "securely fenced" requirement of this section. The dog must be muzzled, leashed, and under restraint of a person capable of controlling the dog whenever the dog is not within such securely fenced or enclosed area or

within the passenger portion of a vehicle. Tethering of the dog is not permitted. With the exception of a dog trained to be a service animal, the dog must not be brought to a dog park or public park even if dogs are allowed otherwise at the location. With the exception of a dog trained to be a service animal, the dog must not be brought to any commercial establishment other than a veterinary office or other medical facility where the dog is being treated. The address at which the dog resides shall be provided to the animal control authority. The dog may not be relocated or its ownership transferred during the investigation.

(d) A dog may not be declared aggressive if:

- (1) The threat, injury, or damage was sustained by a person who, at the time, was unlawfully on the property or who, while lawfully on the property, was tormenting, abusing, or assaulting the dog or its owner or the owner's family member; or
- (2) The dog was protecting or defending a human being within the immediate vicinity of the dog from an unjustified attack or assault.

(e) A letter of the "aggressive dog classification and requirements" (herein the "initial determination") will be provided to the owner by registered mail, certified hand delivery, or service in conformance with the provisions of F.S. ch. 48, relating to service of process. The initial determination shall include the basis for declaring the dog aggressive, a description of the dog, and the responsibility of the owner to maintain and confine the dog. If the result of the investigation is that the dog is not classified as aggressive, a letter will be provided to the owner by registered mail or certified hand delivery confirming that the animal control authority has not classified the dog as aggressive.

(f) The owner may file a written request for a hearing regarding the aggressive dog classification, requirements, or both, within seven calendar days after receipt of the initial determination. The written request for a hearing shall be mailed to the address provided by the animal control authority in the letter.

(g) Procedures for aggressive dog hearing.

- (1) If the owner requests a hearing, the hearing shall be held before an appointed hearing officer within thirty calendar days from the date the animal control authority receives the appeal request from the owner.
- (2) A notice of hearing shall be sent to the owner by registered mail, or certified hand delivery at the address included on the written request for appeal. A hearing shall not be postponed or continued unless a request for continuance, showing good cause for such continuance, is received by the animal control authority at least five calendar days prior to the date set for the hearing. Upon proper notice to the owner, failure of the owner to appear personally or through legal counsel at the hearing shall result in an order affirming the initial determination.
- (3) All hearings shall be open to the public. At the hearing, the owner or his or her representative and any other interested persons may present any evidence relevant to a determination of whether said animal is aggressive. Formal rules of evidence shall not apply but fundamental due process shall be observed and shall govern all proceedings.
- (4) The hearing officer shall have the following powers:

- (a) To adopt rules for the conduct of the hearing.
- (b) To issue subpoenas for the production of documents or to compel the attendance of witnesses, the animal's owner, or City personnel at the hearing, upon the written request of the City, the owner, or upon the hearing officer's own determination. A subpoena may be served by any person authorized by law to serve process and shall be made as provided by law. A party may seek enforcement of a subpoena issued by the hearing officer under the authority of this Chapter by filing a petition for enforcement of such subpoena in a court of competent jurisdiction.
- (c) To administer oaths and take testimony under oath.
- (5) The hearing officer shall hear and consider the evidence presented at said hearing and make a determination as to whether or not to uphold the determination of the animal control authority regarding classification, penalty, or both.
- (6) At the conclusion of the hearing, the hearing officer shall issue findings of fact, based on evidence of record, and conclusions of law in an order affording the proper relief, said findings and relief being consistent with local and state law. The written order shall be filed with the animal control authority and the City Clerk promptly after issuance and shall be deemed entered upon the date of said filing. The animal control authority shall provide a copy of the written order to the owner or the owner's legal counsel by certified mail, return receipt requested, certified hand delivery, or service in conformance with the provisions of F.S. ch. 48, relating to service of process.
- (7) The owner may appeal the hearing officer's written order relating to the classification, penalty, or both to the circuit court in accordance with the Florida Rules of Appellate Procedure. Each party shall be responsible for its own fees and costs associated with the appeal. If an appeal is not timely filed, the written order of the hearing officer shall become final.
- (h) *Owner responsibilities for aggressive dogs.* Within 14 calendar days after a dog has been classified as aggressive, or, if any appeal has been filed, within 14 calendar days of such classification being upheld (dismissal of the appeal shall be deemed to uphold the classification), the owner of the aggressive dog shall comply with the following requirements and responsibilities in order to obtain and maintain an aggressive dog certificate:
 - (1) provide the animal control authority with two (2) color photographs of the dog (front view and side view) that clearly identify the dog.
 - (2) Provide and maintain a current rabies vaccination and animal license for the dog.
 - (3) Provide proof of sterilization from a certified veterinarian licensed in any state.
 - (4) Provide permanent identification of the dog, such as a tattoo on the inside thigh or electronic implantation.
 - (5) Register the dog as aggressive with the animal control authority, and obtain an aggressive dog certificate, which must be renewed annually after the initial two (2) years.
 - (6) Ensure that the dog is securely confined indoors or in a securely fenced or enclosed area from which the dog may not escape (over, under, or through the fence). Electric fences

do not meet the “securely fenced” requirement of this section. The dog must be muzzled, leashed, and under restraint of a person capable of controlling the dog whenever the dog is not within such securely fenced or enclosed area or within the passenger portion of a vehicle. Tethering of an aggressive dog is not permitted.

- (7) Dogs classified as “aggressive” must not be brought to a dog park or public park even if dogs are allowed otherwise at the location.
- (8) Dogs classified as “aggressive” must not be brought to any commercial establishment other than a veterinary office or other medical facility where the dog is being treated.
- (9) The dog must not be relocated or have a transfer of ownership without notifying the animal control authority.
- (10) The animal control authority may require compliance with other reasonable restrictions or requirements which it deems necessary to prevent further violations of this section. Reasonable restrictions or requirements which may be imposed include, but are not limited to, the following:
 - a. Mandatory enrollment and successful completion of an obedience class for the dog. The city may specify which owner or person is required to accompany the dog to the obedience training classes.
 - b. Insurance. In order to protect the public and to afford relief from the severe harm and injury that is likely to result from a aggressive dog attack, the owner of a aggressive dog shall obtain and maintain insurance in the amount of \$100,000.00 for each individual aggressive dog owned to provide liability insurance for damage to persons and property caused by the aggressive dog(s). The insurance shall be provided by an insurance company authorized to do business in the State of Florida, and the owner shall provide the animal control authority evidence of a certificate of insurance and a copy of the endorsement. Annual registration shall be denied any owner not in compliance with this section. If, at any time, the liability insurance is cancelled or lapses, the animal control authority shall have the authority to impound the aggressive dog. If the owner does not re-insure the animal within 14 days of the impoundment, ownership of the dog shall revert to the City and the dog may be euthanized in an expeditious and humane manner.
- (i) The fees for an aggressive dog registration and licenses (including renewals) shall be as established by resolution.
- (j) If a dog designated by another jurisdiction as aggressive or similar classification is brought into the city, the owner shall immediately register the dog with the animal control authority as an aggressive dog in accordance with this section.
- (k) Notification. The owner of an aggressive dog shall immediately notify the animal control officer if:
 - (1) The dog becomes loose or unconfined;
 - (2) The dog attacks a human being or another animal;

- (3) The dog dies;
- (4) The owner moves to another address with the aggressive dog. If the owner moves to a different jurisdiction, then the owner shall notify the enforcement officer of the new jurisdiction that the dog has been classified as aggressive;
- (5) The owner intends to sell or give away the dog. Prior to the dog being sold or given away, the owner shall provide the name, address and telephone number of the proposed new owner to the animal control officer. The new owner of a dog classified as aggressive must comply with all of the requirements of this article. The enforcement officer of the new jurisdiction must be notified by the owner of a dog classified as aggressive that the dog is in its jurisdiction.

(l) Exemptions.

- (1) Any dog that is owned, or the service of which is employed, by a law enforcement agency, is exempt from this section.
- (2) Hunting dogs are exempt from this section when engaged in any legal hunt or training procedure. Dogs engaged in training or exhibiting in legal sports such as obedience trials, conformation shows, field trials, hunting/retrieving trials, and herding trials are exempt from this section when engaged in any legal procedures. However, such dogs at all other times in all other respects are subject to this section. Dogs that have been classified as aggressive may not be used for hunting purposes.
- (3) Agricultural working dogs are exempt from this section when engaged in bona fide livestock herding activities and the reported incident involves injury to the livestock of the owner of the agricultural working dog. However, such dogs at all other times and in all other respects shall be subject to the provisions of this section.
- (4) Any dog used as a service dog for blind, hearing impaired, or disabled persons that bites another animal or a human is exempt from any quarantine requirement following such bite if the dog has a current rabies vaccination that was administered by a licensed veterinarian.
- (m) An owner may apply to the animal control authority for removal of the dog's aggressive designation if there are no further violations of this ordinance involving the dog for three years following the dog's designation as aggressive.

SECTION 8. Section 8-40(c) of the Code of Ordinances of the City of Palm Coast, Florida, is hereby amended as follows:

Sec. 8-40(c)(4) – Procedures for Dangerous Dog Hearing.

- (4) The hearing officer shall have the following powers:
 - (a) To adopt rules for the conduct of the hearing.

(b) To issue subpoenas for the production of documents or to compel the attendance of witnesses, the animal's owner, or City personnel at the hearing, upon the written request of the City, the owner, or upon the hearing officer's own determination. A subpoena may be served by any person authorized by law to serve process and shall be made as provided by law. A party may seek enforcement of a subpoena issued by the hearing officer under the authority of this Chapter by filing a petition for enforcement of such subpoena in a court of competent jurisdiction.

(c) To administer oaths and take testimony under oath.

~~(4)~~(5) The hearing officer shall hear and consider the evidence presented at said hearing and make a determination as to whether or not to uphold the determination of the animal control authority regarding classification, penalty, or both, in accordance with the provisions herein and F.S. § 767.12.

(6) *Burden of proof.* The hearing officer shall issue a determination based upon the preponderance of the evidence.

~~(5)~~(7) At the conclusion of the hearing, the hearing officer shall issue findings of fact, based on evidence of record, and conclusions of law in an order affording the proper relief, said findings and relief being consistent with local and State law. The written order shall be filed with the animal control authority and the City Clerk promptly after issuance and shall be deemed entered upon the date of said filing. The animal control authority shall provide a copy of the written order to the owner or the owner's legal counsel by certified mail, return receipt requested, certified hand delivery, or service in conformance with the provisions of F.S. ch. 48, relating to service of process.

~~(6)~~(8) The owner may appeal the hearing officer's written order relating to the classification, penalty, or both to the circuit court in accordance with the Florida Rules of Appellate Procedure. Each party shall be responsible for its own fees and costs associated with the appeal. If an appeal is not timely filed, the written order of the hearing officer shall become final.

SECTION 9. Section 8-45, Reserved, of the Code of Ordinances of the City of Palm Coast, Florida, is hereby deleted in its entirety and replaced with the following:

Section 8-45 Animals found in distress.

(a) The purpose of this section is to provide a means by which a neglected or mistreated animal, as defined by Section 8-28 of the City Code or Section 828.02, Florida Statutes, may be:

(1) Removed from its present custody, or

(2) Made the subject of an order to provide care, issued to its owner by the county court, any law enforcement officer, any animal control officer certified pursuant to

F.S. § 828.27, or any agent of any county or of any society or association for the prevention of cruelty to animals appointed under F.S. § 828.03, and protected and disposed of appropriately and humanely.

(b) Any law enforcement officer, any animal control officer certified pursuant to F.S. § 828.27, or any agent of any county or of any society or association for the prevention of cruelty to animals appointed under F.S. § 828.03 may:

(1) Lawfully take custody of any animal found neglected or cruelly treated by removing the animal from its present location, or

(2) Order the owner of any animal found neglected or cruelly treated to provide certain care to the animal at the owner's expense without removal of the animal from its present location,

and shall file a petition seeking relief under this section in the county court of the county in which the animal is found within 10 days after the animal is seized or an order to provide care is issued. The court shall schedule and commence a hearing on the petition within 30 days after the petition is filed to determine whether the owner, if known, is able to adequately provide for the animal and is fit to have custody of the animal. The hearing shall be concluded and the court order entered thereon within 60 days after the date the hearing is commenced. The timeframes set forth in this subsection are not jurisdictional. However, if a failure to meet such timeframes is attributable to the officer or agent, the owner is not required to pay the officer or agent for care of the animal during any period of delay caused by the officer or agent. A fee may not be charged for filing the petition. This subsection does not require court action for taking custody and properly disposing of stray or abandoned animals as lawfully performed by animal control agents.

(c) The law enforcement officer or the animal control officer certified pursuant to F.S. §828.27, or the agent of any county or of any society or association for the prevention of cruelty to animals taking custody of an animal pursuant to this section shall have written notice served, at least 3 days before the hearing scheduled under subsection (b), upon the owner of the animal, if he or she is known and is residing in the county where the animal was taken, in accordance with chapter 48 relating to service of process. The sheriff of the county may not charge a fee for service of such notice.

(d)

(1) The law enforcement officer, the animal control officer certified pursuant to F.S. § 828.27, or the agent of any county or of any society or association for the prevention of cruelty to animals taking custody of an animal pursuant to this section shall provide for the animal until either:

a. The owner is adjudged by the court to be able to adequately provide for, and have custody of, the animal, in which case the animal shall be returned to the owner upon payment by the owner for the care and provision for the animal while in the agent's or officer's custody; or

b. The animal is turned over to the officer or agent pursuant to paragraph (c) and humanely disposed of.

(2) If the court determines that the owner is able to provide adequately for, and have custody of, the animal, the order shall provide that the animal in the possession of the officer or agent be claimed and removed by the owner within 7 days after the date of the order.

(3) Upon the court's judgment that the owner of the animal is unable or unfit to adequately provide for the animal:

a. The court may:

i. Order that the current owner have no further custody of the animal and that the animal be sold by the sheriff at public auction or remanded to the custody of the Society for the Prevention of Cruelty to Animals, the Humane Society, the county, the municipality with animal control officers certified pursuant to F.S. §828.27, or any agency or person the judge deems appropriate to be disposed of as the agency or person sees fit; or

ii. Order that the animal be destroyed or remanded directly to the custody of the Society for the Prevention of Cruelty to Animals, the Humane Society, the county, the municipality with animal control officers certified pursuant to s. 828.27, or any agency or person the judge deems appropriate to be disposed of as the agency or person sees fit.

b. The court, upon proof of costs incurred by the officer or agent, may require that the owner pay for the care of the animal while in the custody of the officer or agent. A separate hearing may be held.

c. The court may order that other animals that are in the custody of the owner and that were not seized by the officer or agent be turned over to the officer or agent if the court determines that the owner is unable or unfit to adequately provide for the animals. The court may enjoin the owner's further possession or custody of other animals.

(e) In determining the person's fitness to have custody of an animal, the court may consider, among other matters:

(1) Testimony from the agent or officer who seized the animal and other witnesses as to the condition of the animal when seized and as to the conditions under which the animal was kept.

(2) Testimony and evidence as to the veterinary care provided to the animal.

(3) Testimony and evidence as to the type and amount of care provided to the animal.

(4) Expert testimony as to the community standards for proper and reasonable care of the same type of animal.

(5) Testimony from any witnesses as to prior treatment or condition of this or other animals in the same custody.

(6) The owner's past record of judgments pursuant to this chapter.

(7) Convictions pursuant to applicable statutes prohibiting cruelty to animals.

(8) Other evidence the court considers to be material or relevant.

(f) If the evidence indicates a lack of proper and reasonable care of the animal, the burden is on the owner to demonstrate by clear and convincing evidence that he or she is able and fit to have custody of and adequately provide for the animal.

(g) In any case in which an animal is offered for auction under this section, the proceeds shall be:

(1) Applied, first, to the cost of the sale.

(2) Applied, secondly, to the care of and provision for the animal by the law enforcement officer, the animal control officer certified pursuant to F.S. § 828.27 or the agent of any county or of any society or association for the prevention of cruelty to animals taking custody.

(3) Applied, thirdly, to the payment of the owner for the sale of the animal.

(4) Paid over to the court if the owner is not known.

(h) An individual found to be in violation of this section shall be subject to all enforcement regulations as contained in this chapter and all penalties as set forth in F.S. Ch. 828, and all amendments thereto.

SECTION 10. Section 8-52 of the Code of Ordinances of the City of Palm Coast, Florida, is hereby amended as follows:

Sec. 8-52. - Impoundment, quarantine, reporting, etc., when suspected of having rabies.

(d) All provisions from the "Rabies Prevention and Control in Florida," published by the Florida Department of Health's Division of Disease Control and Health Protection in 2014, or, as subsequently amended or published, may be enforced by the City. To the extent that any such provisions may conflict with the City Code, the City Code shall prevail.

(e) *Reporting of animals infected with rabies.* It shall be the duty of both the owner of, and of any person knowing of, an animal infected with or showing suspicious symptoms of rabies or any unusual behavior, to report the same immediately to the Flagler County Health Department or the animal control officer.

(f) *Reporting of person or animal bitten or scratched.* It shall be the duty of any person, parent, or guardian in the case of a minor, bitten or scratched by any animal, to report the fact of such bite or scratch immediately to the Flagler County Health Department. Any person knowing of or treating any animal bitten by another animal shall report the facts immediately to the Flagler County Health Department.

(g) Duties of animal control officers relating to rabies. Animal control officer shall comply with the following provisions in relation to animal bites potentially involving rabies.

(1) Whenever an animal has bitten or scratched a person or animal or is suspected of having or showing suspicious symptoms of rabies or other infectious or contagious disease, the animal control officer shall investigate and/or capture such animal, alive, if possible, and quarantine it under observation for a period of at least ten (10) days from the date of bite or scratch.

(2) The quarantine shall be in the holding facility designated by the City or, at the owner's request and with approval of the Flagler County Health Department or animal control officer, in a licensed veterinary hospital, or the premises of the owner. Any quarantined animal found or reported at large during the quarantine period shall be picked up by the animal control officer and taken to an approved holding facility for the duration of the quarantine period. Quarantined animals shall be released only upon approval of the Flagler County Health Department, animal control officer, or duly appointed officer. The owner shall bear the cost of care, feeding and maintenance of a quarantined animal. Any animal that is released from quarantine and is not current on rabies vaccinations or City animal license will be required to be vaccinated and licensed with the City within five (5) days of release date, and reported to the animal control officer. All quarantine costs must be paid by the owner prior to release of the animal.

(3) If a quarantined animal dies or is put down, the Flagler County Health Department and the owner shall be notified and, if the animal died during the quarantine, the head of the animal shall be forwarded to one of the department of health and rehabilitative services virology laboratories for pathological examination.

(4) In the event a rabies quarantine is declared by the Flagler County Health Department, the following requirements shall be enforced in the area of quarantine:

a. All animals, vaccinated as well as unvaccinated, must be confined to the owner's premises and will be permitted away from same only when under proper restraint by leash held by a responsible custodian. Confinement to owner's premises may be inside home, cage or run in a humane manner, suitable for animals to stand up and turn around comfortably.

b. All animals found at large during a quarantine period shall be impounded. Animals may be released to their owners or agents upon payment of impounding fees. No animal will be released from the holding facility except to owners or agents. Unvaccinated animals which have been impounded cannot be released to owner or agent until vaccinated or until arrangements have been made to vaccinate with a licensed veterinarian. Any animal subject to quarantine shall not be vaccinated before the quarantine period has expired. There will be no animal adoptions during a quarantine period.

c. In declaring quarantine, the Flagler County Health Department may designate a "Rabies Watch" or "Rabies Alert," depending upon the severity of the situation, and shall issue news releases to that effect.

(5) Exception. The owner of any dog or cat vaccinated with an approved anti-rabies vaccine within the preceding twelve (12) months may have such dog or cat quarantined and confined in a place other than the places specified in subsection sec. 8-52 (g)(2) above. However, if at any time during the quarantine it is determined by the Flagler County Health Department or the animal control officer that the quarantine is not properly maintained in order to insure isolation of the animal, the right of this exception shall become inapplicable and the animal control/services officer or duly appointed officer at the owner's expense, shall impound the animal.

(6) If in the event a dog or cat does not possess a current rabies vaccination from a licensed veterinarian, then owner of said animal shall be given written notice by the animal control/services officer to obtain said vaccination within a period not to exceed five (5) calendar days, as enforced by the animal control/services officer.

(7) The animal control/services officer shall consult with the Flagler County Health Department and shall receive advice on all matters related to the protection of the public from rabies.

(8) Surrender of animal for quarantine or destruction. Animals for quarantine or destruction shall be surrendered upon demand of the animal control/services officer, Flagler County Health Department, code enforcement officer, or any law enforcement officer.

SECTION 11. Section 8-57 of the Code of Ordinances of the City of Palm Coast, Florida,

is hereby amended as follows:

Sec. 8-57. - Methods of enforcement; procedures; investigations.

- (5) Issue a civil citation to the person who is in violation of this article. The civil penalty shall not exceed \$500.00. Such citation may be contested to the City's Hearing Officer.

The citation shall contain:

- ~~i.~~ a. The date and time of issuance.
- ~~ii.~~ b. The name and address of the person.
- c. The date and time the civil infraction was committed.

SECTION 12. SEVERABILITY. It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this Code are severable, and if any phrase, clause, sentence, paragraph or section of this Code shall be declared unconstitutional by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Code.

SECTION 13. CODIFICATION. It is the intention of the City Council of the City of Palm Coast, Florida, and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the City of Palm Coast, Florida; that the Sections of this Ordinance may be renumbered or re-lettered to accomplish such intention; that the word, “Ordinance” may be changed to “Section,” “Article,” or other appropriate word.

SECTION 14. CONFLICTS. All ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed.

SECTION 15. EFFECTIVE DATE. This Ordinance shall become effective immediately upon its passage and adoption.

Approved on first reading this _____ day of _____ 2019.

Adopted on the second reading after due public notice and hearing this _____ day of _____ 2019.

CITY OF PALM COAST, FLORIDA

ATTEST:

MILISSA HOLLAND, MAYOR

VIRGINIA A. SMITH, CITY CLERK

APPROVED AS TO FORM AND LEGALITY

WILLIAM E. REISCHMANN, JR.
CITY ATTORNEY