

ORDINANCE NO. 388

AN ORDINANCE OF THE CITY OF BURDEN REPEALING ALL SECTIONS OF CHAPTER 2 ARTICLE 4 OF THE BURDEN CITY CODE AND AMENDING THE TITLE OF CHAPTER 2 ARTICLE 4 OF THE BURDEN CITY CODE RELATING TO PITBULLS PROHIBITED

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF BURDEN, KANSAS:

Section 1: All Sections of Chapter 2 Article 4, titled Pitbulls Prohibited, of the Burden City Code are hereby repealed.

Section 2: The title of Article 4 of the Burden City Code is hereby amended to read as follows:
ARTICLE 4. NUISANCE AND DANGEROUS ANIMALS.

Section 3: The Burden City Code is hereby amended by adding the following Sections to Article 4 which read as follows:

Section 2-401 Definitions:

Definitions "Pit Bull" means:

1. Bull Terrier breed of Dog
2. Staffordshire bull terrier breed of dog
3. American pit bull terrier breed of dog
4. American Staffordshire terrier breed of dog
5. Dogs of mixed breed or of other breeds than above listed, which breed or mixed breed is known as pit bulls, pit bull dogs or pit bull terrier.
6. Any dog which has the appearance and characteristics of being predominantly of the breeds of bull terrier, Staffordshire bull terrier, American bull terrier, American Staffordshire terrier; any other breeds commonly known as pit bulls, pit bull dogs or pit bull terriers; or a combination of any of these breeds.

Definitions "Public Nuisance" means any animal or animals which:

1. Without provocation: molests chases or interferes with persons or vehicles in the public right-of-way by jumping upon, chasing, barking or biting at persons or vehicles.
2. Threatens or endangers the health or well-being of persons or other animals, or injures other animals.
3. Trespasses on school grounds.
4. Is repeatedly at large, specifically three or more times per twelve (12) month period.
5. Damages public or private property other than that of its owner or harbinger by its activities.
6. Creates excessive noise; including barks, howls, whines, brays or cries, which cause an unreasonable annoyance, disturbance or discomfort to the complainant.
7. Defecates upon any public or private property, other than the property of the owner of the animal, unless promptly removed by the animal owner or harbinger (including domestic cats). This Section shall not apply to a blind person while walking his/her

- dog.
8. Creates noxious or offensive odors or unclean conditions sufficient to annoy persons living in the vicinity.
 9. Creates an insect breeding or attraction site due to the accumulation of excreta.
 10. Scatters refuse that is bagged or otherwise contained.
 11. Is unconfined while in heat.
 12. Is ridden on public property and obstructs or interferes with vehicular or pedestrian traffic.

Definitions "Tethering" means any animal or animals which:

Tethering refers to any chain, leash, rope, cable, string, leather or nylon strap or any other material used to fasten a dog to a stationary object or a stake.

Section 2-402 Nuisance Animals:

It shall be unlawful for the owner of any animal to keep or maintain such animal in the City of Burden so as to constitute a nuisance.

- A. No animal may be declared a nuisance if, at the time of violations, the person or animal was teasing, tormenting, abusing or assaulting the alleged nuisance animal.
- B. No animal may be declared a nuisance if the animal was protecting or defending a human being within the immediate vicinity of the animal from an unjustified attack or assault.

Section 2-403 Violation – Penalty:

- A. Any person, firm or corporation violating any of the provisions of this chapter shall, upon conviction thereof, be fined in a sum of not less than sixty-seven dollars and fifty cents (\$67.50) nor more than one hundred dollars (\$100.00) for the first offense and a sum of not less than eighty-two dollars and fifty cents (\$82.50) nor more than two hundred dollars (\$200.00) for the second offense or any subsequent offenses.
- B. If a notice to appear is issued charging violation of this provision, a subpoena shall also be issued to the complainant to testify to the nuisance under oath.
- C. It shall be a separate offense under this Subsection for any person owning, keeping or harboring any animal deemed a nuisance animal to permit, or allow the animal to run at-large within the City.

Section 2-404 Tethering:

- A. It shall be illegal for any animal to be tethered or chained for more than a reasonable amount of time, given the elements, in the city limits. This ordinance requires that a dog must be untethered for three hours before being tethered again.
 1. No person shall use any tether shorter than 10 feet in length.
 2. No person shall use chains weighing more than 1/8 of the animal's weight, or inhibiting the free movement of the animal.
 3. No person shall tether a dog on a choke chain.
 4. No person shall tether a dog without access to proper protection from the elements.

5. No person shall tether a dog in an open area where it can be teased by people or in an area that does not provide protection from attack by other animals.
6. No person shall tether an animal where no steps have been taken to prevent the surface from becoming wet and muddy in the event of precipitation.
7. No person shall have a pulley-run less than 10 feet in length.

Section 2-405 Dangerous Animals:

- A. It shall be unlawful for the owner of any animal to keep or maintain such animal in the City so as to constitute a dangerous animal. A dangerous animal is any animal which has done any of the following:
 - a. Caused injury, other than killing or serious physical harm, to any person;
 - b. Killed another animal;
 - c. Been the subject of a second or subsequent violation of Section 2-402.
- B. Notwithstanding the definition of a dangerous animal above, no animal may be declared dangerous if any injury or damage is sustained by a person or animal who at the time such injury or damage was sustained, was upon premises occupied by the owner or keeper of the animal, or was teasing, tormenting, abusing or assaulting the animal or was committing or attempting to commit a crime, or if the animal was protecting or defending a human being within the immediate vicinity of the animal from an unjustified attack or assault.
- C. Any dangerous animal which is in the custody of an Animal Control Officer and which in the judgment of the Director of Public Works, or his/her designee, would constitute a menace to the health, safety or welfare of the public if released from custody, may be held pending a hearing on any charges or complaints filed in the Municipal Court to determine the disposition thereof.

Section 2-406 Restrictions on the ownership of Staffordshire Terriers and Mix Breeds Thereof:

- A. Registration and Reporting: The owner or keeper of a Staffordshire Terrier and mix breeds thereof shall properly license the dog pursuant to section 2-201 of this code, and pursuant to the provisions set forth in this subsection. In addition to having, or obtaining, the license required by section 2-201, an owner or keeper shall submit a completed registration form for the keeping of a Staffordshire Terrier and mix breeds thereof to the City Clerk or his/her designee within sixty (60) days after the publication of this ordinance.
- B. The owner or keeper of the Staffordshire Terrier and mix breeds thereof shall pay a \$50.00 annual registration fee for each dog, and such fee shall be submitted to the City Clerk or his/her designee with the registration form for the keeping of Staffordshire Terrier and mix breeds thereof.
- C. The City of Burden shall request and obtain conviction information in Articles 54, 55, 56, 57 and 63 in Chapter 21, and in Article 41 of Chapter 65 from the Kansas Bureau of Investigation as part of the registration process.
- D. No dog shall be considered to be unlicensed under the terms of this subsection, if the owner or keeper has timely filed a completed application, until such application has been denied.

- E. All adult pit bulls within the City of Burden are required to have an identification microchip implanted in the dog traceable to the current owner and registered with the City of Burden. Such microchip information shall be included in the dog's annual license application with the City of Burden. The owner, keeper or harbinger shall pay all costs associated with the microchip procedure.
- F. It shall be unlawful for any person to own, keep or harbor more than two Pit Bulls.
- G. It shall be unlawful for more than two adult Pit Bulls, to be owned, kept, or harbored on the same premises or dwelling.
- H. Any person, who owns a Pit Bull, shall have sixty days (60) thereafter the final adoption of this ordinance, to microchip and surgically sterilize such animal. Sterilization of the Pit Bull shall not be required upon certification, presented to the City Clerk or his or her designee, by a licensed veterinarian that such sterilization would be injurious to such dog due to its health or age.
- I. The owner, keeper or harbinger of any Pit Bull dog shall provide documentation of the sterilization upon completion to the City Clerk or his or her designee.
- J. Any owner, keeper or harbinger failing to provide documentation of the sterilization procedure as required by this section shall be deemed guilty of a misdemeanor.
- K. Any individual who fails to comply with the requirements of this section shall be guilty of a misdemeanor.

Section 2-407 Keeping of Staffordshire Terriers and Mix Breeds Thereof:

- A. It is unlawful for an owner or keeper of a Pit Bull dog to permit the dog to be outside an approved or secure enclosure unless the dog is restrained by a substantial chain or leash and muzzled; under physical restraint by a responsible person who is at least 18 years of age or older and possesses sufficient strength for physical control of the animal.
- B. The same above requirements shall also be in effect for the purpose of transportation to and from a veterinarian for medical treatment.
 - a. In all such events, the Pit Bull dog shall be securely muzzled and restrained with a chain or leash not exceeding four feet in length, and shall be under the direct control and supervision of the owner or keeper of the Pit Bull dog.
 - b. The muzzle shall be made and used in a manner that will not cause injury to the dog or interfere with its vision or respiration, but shall prevent it from biting any human or animal.
- C. Pit Bull dogs shall be securely confined indoors or in a securely enclosed and locked pen or kennel, except when leashed and muzzled as above provided above.
 - a. All structures used to confine a Pit Bull dog must be locked with a key or combination type lock.
 - b. Such structure must have a secure bottom or floor attached to the sides of the

- pen or the sides of the pen must be embedded in the ground no less than eighteen (18) inches.
- c. All such structures must be adequately lighted and ventilated and kept in a clean and sanitary condition.
 - D. The owner, keeper or harbinger shall allow the access to the property where the Pit Bull dog is being harbored to facilitate inspections and ensure compliance for the duration of the life of the animal.
 - E. It is unlawful for anyone having prior felony convictions defined in articles 54, 55, 56, 57 and 63 of Chapter 21, and article 41 of Chapter 65 of the Kansas Statutes Annotated to possess, harbor, own or reside on any premises with a Pit Bull dog.
 - F. The City of Burden shall request and obtain conviction information from the Kansas Bureau of Investigation as part of the registration process.
 - G. It shall be unlawful for any person to:
 - a. Harbor, keep or maintain a Pit Bull dog on property not owned by the person without the written consent of the land owner; or
 - b. Sell, barter or give away to another person a Pit Bull dog; or
 - c. Own, keep or harbor more than two Pit Bull dogs.
 - H. Should a Pit Bull dog be found running at large in violation of this section attack or inflict injury upon any person, the Judge of the Municipal Court shall, in addition to any other penalty provided in Chapter 2, order the dog destroyed. Provided, however, the Judge of the Municipal Court may, at his or her discretion, consider whether the attack or injury was sustained by a person who, at the time, was committing a criminal trespass or other tort upon the premises of the owner of the dog, or was tormenting, abusing, or assaulting the dog, or has, in the past, been observed or reported to have tormented, aroused, or assaulted the dog or was committing or attempting to commit a crime.

Section 2-408 Keeping of Dangerous Animals:

Upon conviction of keeping a dangerous animal described in section 2-405, and the animal returning to its owner, the animal shall be kept subject to the following standards:

- A. Registration and Reporting: The owner or keeper of a dangerous dog shall properly license the dog pursuant to section 2-201 of this code, and pursuant to the provisions set forth in this subsection. In addition to having, or obtaining, the license required by section 2-201, an owner or keeper of a dangerous dog shall submit a completed application for a dangerous dog license to the City Clerk or his/her designee within five business (5) days of the date upon which the dog has been deemed to be dangerous under the provisions of this section, if such occurs after the publication of this ordinance.
 - a. The application for a dangerous dog license shall be submitted on forms provided by the city clerk, and to be considered a completed application it shall be accompanied by all documents and other information required hereunder.
 - b. Upon issuance, the dangerous dog license shall be effective for one (1) year from

the date of issuance, or for the duration of the liability insurance required by this section, whichever is shorter, and shall be reapplied for prior to its expiration.

- c. Such dangerous dog license shall not be transferable, and shall expire whenever changes occur that would make the owner or keeper ineligible to obtain a license.
 - d. The owner or keeper of the dangerous dog shall pay a \$50.00 annual registration fee for each dangerous dog, and such fee shall be submitted with the application for a dangerous dog license.
 - e. No dog shall be considered to be unlicensed under the terms of this subsection, if the owner or keeper has timely filed a completed application, until such application has been denied.
 - f. The owner or keeper of the dangerous dog shall maintain with the city clerk or his/her designee the address where the dangerous dog is primarily kept or harbored. The owner or keeper shall notify the city clerk or his/her designee within five (5) business days if any of the following occurs:
 - 1. A change in the primary address where the dangerous dog is kept or harbored, whether in or out of the city limits; or,
 - 2. A change in the person who is owning, keeping or harboring the dangerous dog; or,
 - 3. The death of the dangerous dog; or,
 - 4. Any change in the information supplied in the application for the dangerous dog license, or in the information submitted along with such application; or,
 - 5. Harbor, keep or maintain a dangerous dog on property not owned by the person without the written consent of the land owner.
- B. Leash and Muzzle. No person shall permit a dangerous animal to go outside its kennel or pen unless such dog is securely leashed with a leash no longer than four (4) feet in length. No person shall permit a dangerous animal to be kept on a chain, rope or other type of leash outside its kennel or pen unless a person is in physical control of the leash. Such dogs may not be leashed to inanimate object such as trees, posts, buildings, etc. in addition, all dangerous animals on a leash outside the animal's kennel must be muzzled by a muzzling device sufficient to prevent such animal from biting persons or other animals.
- C. Confinement. All dangerous animals shall be securely confined indoors or in a securely enclosed and locked pen or kennel, except when leashed and muzzled as above provided. Such pen, kennel or structure must have secure sides and a secure top attached to the sides. All structures used to confine dangerous animals must be locked with a key or combination lock. Such structure must have a secure bottom or floor attached to the sides of the pen or the sides of the pen must be embedded in the ground no less than two (2) feet. All such structures must be adequately lighted and ventilated and kept in a clean and sanitary condition.
- D. Confinement Indoors. No dangerous animal may be kept on a porch, patio or in a part of a house or structure that would allow the animal to exit such building on its own volition. In addition, no such animal may be kept in a house or structure when the windows or screen doors are the only obstacle preventing the animal from exiting the structure.

- E. Signs. All owners, keepers or harborers of dangerous animals within the City shall within 10 days of conviction, display in a prominent place on their premises a sign easily readable by the public using the words Beware of Dog or Beware of Dangerous Animal, whichever is applicable.
- F. Insurance. All owners, keepers or harborers of dangerous animals must within 10 days of conviction provide proof to the City Clerk or his/her designee, of public liability insurance in a single incident amount of \$1,000,000 for bodily injury to or death of any person or persons or for damage to property owned by any persons which may result from the ownership, keeping or maintenance of such animal. The insurance policy will provide that no cancellation or changes of the policy will be made unless 10 days written notice is first given to the City Clerk or his/her designee.
- G. Identification Photographs. All owners, keepers or harborers of dangerous animals must within 10 days of conviction provide to the City Clerk or his/her designee, two (2) color photographs of the registered animal clearly showing the color and approximate size of the animal.
- H. Microchip. All owners, keepers or harborers of dangerous animals must within 10 days of conviction microchip the animal and provide microchip information to the City Clerk or his/her designee, to register the animal as dangerous.
- I. Spaying/Neutering. All owners, keepers or harborers of dangerous animals must within 10 days of conviction spay or neuter the animal and provide proof of sterilization to the City Clerk or his/her designee.
- J. Sale or Transfer of Ownership Prohibited. Sale - No person shall sell, barter or in any other way dispose of a dangerous animal registered with the City to any person within the City unless the recipient person resides permanently in the same household and on the same premises as the registered owner of such animal; provided that the registered owner of a dangerous animal may sell or otherwise dispose of a registered dog or the offspring or such dog to persons who do not reside within the City.
- K. Failure to Comply: It shall be unlawful for the owner or keeper of a dangerous animal to fail to comply with the keeping requirements and conditions set forth in this Article. Any animal found to be the subject of a violation of this Article shall be subject to immediate seizure and impoundment. In addition, failure to comply with the provisions of this Article is deemed a separate offense. Upon conviction, the Court shall order the revocation of the license of such animal resulting in the immediate removal of the animal from the City of Burden. In addition to the foregoing penalties, any person who violates this Article shall pay all expenses, including shelter, food, handling veterinary care and testimony necessitated by the enforcement of this Article.

Section 2-409 Violation – Penalty:

- A. Any person violating or permitting the violation of Sections 2-405, 2-113, 2-406, and 2-408 of this chapter shall, upon conviction in municipal court be fined a sum not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00). In addition, the court may order the permit, license or registration of the subject animal revoked and/or the animal removed from the city. Should the defendant refuse to remove the animal from the city, the municipal judge shall find the owner in contempt

and order immediate confiscation and impoundment of the animal. Each day that a violation continues shall be deemed a separate offense. In addition to the foregoing penalties, any person who violates this chapter shall pay all expenses, including shelter, food, handling, veterinary care and testimony necessitated by the enforcement.

- B. Upon conviction of keeping a dangerous animal, the Municipal Court Judge may order restitution be paid to the victim of the violation of Section 2-405.
- C. Upon conviction of keeping a dangerous animal, and the animal returning to its owner, the animal shall be kept subject to the standards identified in Section 2-409 (D).
- D. It shall be unlawful for any person to violate the provisions of this Article. Any person found guilty of violating the provisions of this Article shall be assessed, fined, and the animal disposed of, as provided below:
 - a. At-Large/Registration. Any dangerous dog that is not confined or registered as required pursuant to this Article shall be impounded by an animal control officer or a law enforcement officer. In addition to all costs for impoundment, the owner or keeper shall pay a Two Hundred Fifty Dollar (\$250.00) fine. For a second offense within twenty-four (24) months, in which the dog is not confined or registered as required pursuant to this Section, in addition to all costs for impoundment, the owner or keeper shall pay a Five Hundred (\$500.00) fine and the animal control officer or law enforcement officer is empowered to impound the dog, and after the expiration of a five (5) day waiting period, exclusive of Sundays and holidays, shall order said dog removed from the City of Burden.
 - b. Attack on Human. If any dangerous dog shall attack, assault, wound, bite, or otherwise injure or kill, or assist in such injury or killing, a human being, the owner or keeper, in addition to other possible penalties, shall pay a Five Hundred Dollar (\$500.00) fine and the animal control officer or law enforcement officer is empowered to impound the dog, and after the expiration of a ten (10) day waiting period, exclusive of Sundays and holidays, shall order the dog removed from the City of Burden, or destroy said dog.
 - c. Attack on other animal. If any dangerous dog shall kill or wound, or assist in killing or wounding, any domestically owned animal while off the owner or keeper's property, the owner or keeper shall pay a Two Hundred Fifty Dollar (\$250.00) fine. For a second offense within twenty-four (24) months, in which the same dog is involved in attack on another animal while off the owner or keepers property as required pursuant to this Section, in addition to all costs for impoundment, the owner or keeper shall pay a Five Hundred (\$500.00) fine and the animal control officer or law enforcement officer is empowered to impound the dog, and after the expiration of a ten (10) day waiting period, exclusive of Sundays and holidays, shall order said dog removed from the City of Burden, or destroy said dog.
 - d. If the owner or keeper of a dog impounded pursuant to this Section shall believe that there shall not have been a violation of the provisions of this Section, such owner may petition the Municipal Court, on forms approved by the Municipal Judge, requesting that the impounded dog not be destroyed. The

impounded dog shall not be destroyed pending the resolution of such owner's petition if the petition shall have been filed within five (5) days of impoundment of such dog and notice shall be have been delivered within five (5) days of the impoundment of such dog to the City of Burden. The dog shall remain impounded pending the determination of the petition. If the court shall find that there shall not have been a violation, such dog shall be released to the custody of the owner upon the payment of the expenses by the owner or keeper.

- e. All regulations shall be explained to the owner of the dangerous animal, a copy of which shall be given to and signed for by the owner, keeper or harborer.
- f. In addition to the fines provided in this Section, the Municipal Judge shall have the authority to sentence the person adjudicated guilty of this Article

Section 4: All ordinances or parts of ordinances in conflict herewith are hereby repealed.

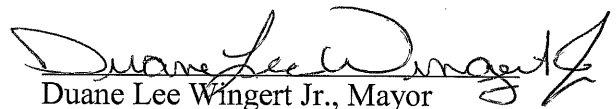
Section 5: That if any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The Commission hereby declares that it would have passed this ordinance, and each section, subsection, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional.

Section 6: That nothing in this ordinance shall be construed to affect any suit or proceeding impending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any act or ordinance hereby repealed as cited in this ordinance; nor shall any just or legal right or remedy of any character be lost, impaired or affected by this ordinance.

Section 7: This Ordinance shall take effect and be in full force from and after its passage by the governing body of the City and publication in the official City newspaper.

PASSED AND APPROVED by the Governing Body on this 22nd day of January, 2018.

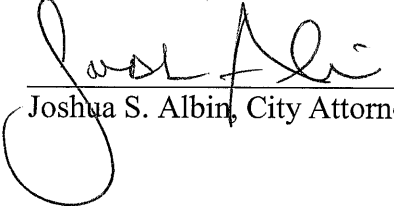
(SEAL)


Duane Lee Wingert Jr., Mayor

ATTEST


Julia Loving, City Clerk

APPROVED AS TO FORM


Joshua S. Albin, City Attorney

