

**BOROUGH OF WEST CAPE MAY  
CAPE MAY COUNTY**

**ORDINANCE 505-15**

**AN ORDINANCE GOVERNING THE TREATMENT  
OF VICIOUS AND DANGEROUS DOGS**

**WHEREAS**, as a supplement to the governing state statutes (N.J.S.A. 4:19-16 et seq.), the Borough Commission of the Borough of West Cape May deems it in the Borough's best interest to have a comprehensive set of rules dealing with the identification, licensing and treatment of vicious and dangerous dogs,

**NOW, THEREFORE, be it ORDAINED** by the Borough Commission of the Borough of West Cape May as follows:

**Section 1. Definitions.**

As used in this section, the following terms shall have the meanings indicated:

**ANIMAL CONTROL OFFICER**

The Borough's certified Animal Control Officer or, in the absence of such an officer, the Chief of Police or his designee.

**DOG**

Any dog or dog hybrid.

**DOMESTIC ANIMAL**

Any cat, dog or livestock, other than poultry.

**POTENTIALLY DANGEROUS DOG**

Any dog or dog hybrid declared potentially dangerous by a Municipal Court pursuant to Subsection F.

**VICIOUS DOG**

Any dog or dog hybrid declared vicious by a Municipal Court pursuant to Subsection E.

**Section 2. Seizure and Impoundment by Animal Control Officer.**

A. The Animal Control Officer shall seize and impound a dog when the officer had reasonable cause to believe that the dog:

1. Attacked a person and caused death or serious bodily injury to that person as defined in N.J.S.A. 2C:11-1(b);

2. Caused bodily injury as defined in N.J.S.A. 2C:11-1(a) to a person during an unprovoked attack and poses a serious threat of harm to persons or domestic animals;

3. Engaged in dogfighting activities as described in N.J.S.A. 4:22-24 and 4:22-26; or

4. Has been trained, tormented, badgered, baited or encouraged to engage in unprovoked attacks upon persons or domestic animals.

B. The dog shall be impounded until the final disposition as to whether the dog is vicious or potentially dangerous. Subject to the approval of the Municipal or County Health Officer, the dog maybe Impounded in a facility or other structure agreeable to the owner.

C. The Animal Control Officer shall document all evidence relating to the decision to seize and impound the dog, including statements from witnesses, complainants or victims, including the incident date or dates and the names, addresses and telephone numbers of such witnesses, complainants or victims; police reports; observations of the Animal Control Officer; and other relevant information.

### **Section 3. Notice of Seizure and Impoundment; Determination of Identity of Owner; Notice of Hearing; Return of Statement by Owner; Destruction of Dog.**

A. The Animal Control Officer shall notify the Municipal Court and the Municipal or County Health Officer immediately that he has seized and impounded a dog pursuant to Subsection B, and that a hearing is required. The Animal Control Officer shall, through a reasonable attempt, determine the identity of the owner of any dog seized and impounded pursuant to Subsection B. If its owner cannot be identified within seven days, that dog may be humanely destroyed.

B. The Animal Control Officer shall, within three working days of the determination of the identity of the owner of a dog seized and impounded pursuant to Subsection B, notify, by certified mail, return receipt requested, the owner concerning the seizure and impoundment and that, if the owner wishes, a hearing will be held to determine whether the impounded dog is vicious or potentially dangerous. This notice shall also require that the owner return, within seven days, by certified mail or hand delivery, a signed statement indicating whether he wishes the hearing to be conducted or, if not, relinquishing ownership of the dog, in which case the dog may be humanely destroyed. If the owner cannot be notified by certified mail, return receipt requested, or refuses to sign for the certified letter or does not reply to the certified letter with a signed statement within seven days of receipt, the dog may be humanely destroyed.

C. In the event that the owner requests a hearing, the Animal Control Officer shall promptly notify the Municipal Court Administrator and the Municipal Court Prosecutor. The Animal Control Officer shall be responsible to provide the Municipal Court Prosecutor with all evidence relating to the dog in question, including the names,

addresses and telephone numbers of witnesses who should be subpoenaed for the hearing and their probable testimony.

#### **Section 4. Agreement Between the Borough and Dog Owner; Settlement and Disposition; Liability of Municipality; Legal Expenses.**

Notwithstanding any provision in this article or in N.J.S.A, 4:19-17 et seq. to the contrary, the Borough and the owner of the dog may settle and dispose of the matter, at any time, in such manner and according to such terms and conditions as maybe mutually agreed upon in a writing signed by both parties. Notwithstanding any provision or law to the contrary, neither the Borough nor any of its officers, employees or agents shall have any liability by virtue of having entered into any settlement agreement pursuant to this section for any action or inaction related to the entry into such agreement, or for any injuries or damages caused thereafter by the dog. The Borough may, as a condition of the settlement agreement, also require that the owner of the dog hold the Borough and its officers, employees and agents harmless for any legal expenses or fees incurred in defending against any such cause of action brought against the Borough, notwithstanding the prohibition against such causes of action set forth in NJ.S.A. 4:19-21.1. For the purposes of settlement agreements made under this section, the Animal Control Officer is authorized to negotiate and execute such agreements on behalf of the Borough, provided that the Borough Attorney review, and the Borough Commission approve, all such settlement agreements.

#### **Section 5. Finding to Declare a Dog Vicious; Destruction.**

A. The Municipal Court shall declare the dog vicious if it finds, by clear and convincing evidence, that the dog:

1. Killed a person or caused serious bodily injury as defined in NJ.SA 2C:11-1(b) to a person;or
2. Has engaged in dog-fighting activities as described in NJ.S.A. 4:22-24 and 4:22-26.

B. A dog shall not be declared vicious for inflicting death or serious bodily injury as defined in NJ.S.A. 2C:11-1(b) upon a person if the dog was provoked. The Borough shall bear the burden of proof to demonstrate that the dog was not provoked.

C. If the Municipal Court declares a dog to be vicious, and no appeal is made of this ruling pursuant to NJ.S.A. 4:19-25, the dog shall be destroyed in a humane and expeditious manner, except that no dog may be destroyed during the pendency of an appeal.

#### **Section 6. Finding to Declare a Dog Potentially Dangerous.**

A. The Municipal Court shall declare a dog to be potentially dangerous if it finds, by clear and convincing evidence, that the dog:

1. Caused bodily injury as defined in N.J.S.A. 2C:11-1(a) to a person during an unprovoked attack and poses a serious threat of bodily injury or death to a person; or

2. Severely injured or killed another domestic animal; and

a. Poses a threat of serious bodily injury or death to a person; or

b. Poses a threat of death to another domestic animal; or

3. Has been trained, tormented, badgered, baited or encouraged to engage in unprovoked attacks upon persons or domestic animals.

B. A dog shall not be declared potentially dangerous for:

1. Causing bodily injury as defined in N.J.S.A. 2C:11-1(a) to a person if the dog was provoked; or

2. Severely injuring or killing a domestic animal if the domestic animal was the aggressor.

C. For the purposes of Section 6(B)(1) of this section, the Borough shall bear the burden of proof to demonstrate that the dog was not provoked.

### **Section 7. Order and Schedule for Compliance for Potentially Dangerous Dog Conditions.**

If the Municipal Court declares the dog to be potentially dangerous, it shall issue an order and a schedule for compliance which, in part:

A. Shall require the owner to comply with the following conditions. The owner shall:

1. Apply, at his own expense, to the Borough Clerk or other Borough official designated to license dogs pursuant to N.J.S.A. 4:19-15.2 for a special municipal potentially dangerous dog license, municipal registration number and red identification tag issued pursuant to Section 11. The owner shall, at his own expense, have the registration number tattooed upon the dog in a prominent location. A potentially dangerous dog shall be impounded until the owner obtains a municipal potentially dangerous dog license, municipal registration number and red identification tag.

2. Display, in a conspicuous manner, a sign on his premises upon which the dog is kept warning that a potentially dangerous dog is on the premises. The sign shall be visible and legible from 50 feet of the enclosure required pursuant to Subsection A(3) of this section.

3. Immediately erect and maintain an enclosure for the potentially dangerous dog on the property where the potentially dangerous dog will be kept and maintained, which has sound sides, top and bottom, and which shall be securely fastened to the ground, to prevent the potentially dangerous dog from escaping by climbing, jumping or digging, and which is within a fence of at least six feet in height separated by at least three feet from the confined area. The owner of a potentially dangerous dog shall securely lock the enclosure to prevent the entry of the general public and to preclude any release or escape of a potentially dangerous dog. All potentially dangerous dogs shall be confined in the enclosure or, if taken out of the enclosure, securely muzzled and restrained with a tether approved by the Animal Control Officer and having a minimum tensile strength sufficiently in excess of that required to restrict the potentially dangerous dog's movements to a radius of no more than three feet from the owner and under the direct supervision of the owner.

B. May require the owner to maintain liability insurance in an amount determined by the Municipal Court to cover any damage or injury caused by the potentially dangerous dog. The liability insurance, which may be separate from any other homeowner policy, shall contain a provision requiring the Borough to be named as an additional insured for the sole purpose of being notified by the insurance company of any cancellation, termination or expiration of the liability insurance policy.

**Section 8. Procedures for Appeal.** The owner of the dog or the Animal Control Officer may appeal any final decision, order or judgment, including any conditions attached thereto, of the Municipal Court, by filing an appeal with the Superior Court, Law Division, in accordance with the rules governing the courts of the State of New Jersey pertaining to appeals from courts of limited jurisdiction. The Superior Court shall hear the appeal by conducting a hearing de novo in the manner established by those rules for appeals from courts of limited jurisdiction.

**Section 9. Liability of Owner for Costs. Rabies Testing.**

A. If a dog is declared vicious or potentially dangerous and all appeals pertaining thereto have been exhausted, the owner of the dog shall be liable to the Borough for the costs and expenses of impounding and destroying the dog. The owner shall incur the expenses of impounding the dog in a facility other than the municipal pound, regardless of whether the dog is ultimately found to be vicious or potentially dangerous.

B. If the dog has bitten or exposed a person within 10 days previous to the time of euthanasia, the Animal Control Officer shall cause its head to be transported to the New Jersey Department of Health laboratory for rabies testing.

**Section 10. Right to Convene Hearing for Subsequent Actions of Dog.** If the Municipal Court finds that the dog is not vicious or potentially dangerous, the Municipal

Court shall retain the right to convene a hearing to determine whether the dog is vicious or potentially dangerous for any subsequent actions of the dog.

**Section 11. Duties of Owner of Potentially Dangerous Dog.** The owner of a potentially dangerous dog shall:

- A. Comply with the provisions of this ordinance in accordance with a schedule established by the Municipal Court, but in no case more than 60 days subsequent to the date of determination.
- B. Notify the Animal Control Officer, the Police Department and the Borough Clerk if a potentially dangerous dog is at large or has attacked a human being or killed a domestic animal.
- C. Notify the Animal Control Officer, the Police Department and the Borough Clerk within 24 hours of the death, sale or donation of a potentially dangerous dog.
- D. Prior to selling or donating the dog, inform the prospective owner that the dog has been declared potentially dangerous.
- E. Upon the sale or donation of the dog to a person residing in a different municipality, notify the department and licensing authority, police department or force and animal control officer of that municipality of the transfer of ownership and name, address and telephone of the new owner.
- F. In addition to any license fee required pursuant to the Borough's Animal Control Ordinances, pay a potentially dangerous dog license fee to the Borough as provided by Section 14 of this Ordinance.

**Section 12. Violations and Penalties; Enforcement.** The owner of a potentially dangerous dog who is found by clear and convincing evidence to have violated this article or any rule or regulation adopted pursuant thereto, or to have failed to comply with a court's order shall be subject to a fine of not less than \$100 per day and not more than \$1,000 per day of the violation. The Municipal Court shall have jurisdiction to enforce this section. The Animal Control Officer is authorized to seize and impound any potentially dangerous dog whose owner fails to comply with the provisions of this article or any rule or regulation adopted pursuant thereto or a court's order. The Municipal Court may order that the dog so seized and impounded be destroyed in an expeditious and humane manner.

**Section 13. Potentially dangerous dog registration number, tag and license; Issuance; Telephone Number to Report Violations.**

- A. The Borough Clerk shall issue a potentially dangerous dog registration number and red identification tag along with a municipal potentially dangerous dog license upon a demonstration of sufficient evidence by the owner to the Animal Control Officer that he

has complied with the court's orders. The last three digits of each potentially dangerous dog registration number will be the three-number code assigned to the Borough in the regulations promulgated pursuant to N.J.S.A. 4:19-33. The Animal Control Officer shall verify, in writing, compliance to the Borough Clerk or other official designated to license dogs in the borough.

B. The Animal Control Officer shall publicize a telephone number for reporting violations of this section. The telephone number and any changes in this number shall be reported immediately to the New Jersey Department of Health.

**Section 14. Fee for potentially dangerous dog license.** Each person who shall own, possess, keep or harbor any potentially dangerous dog or dogs shall obtain an annual license for each dog and shall have the same registered and numbered with the Borough Clerk and for such license shall pay the sum of \$700 as a license fee for each and every potentially dangerous dog.

**Section 15. Inspection to Determine Continuing Compliance.** The Animal Control Officer shall inspect the enclosure and the owner's property at least monthly to determine continuing compliance Section 7(A)(2) and (3) of this ordinance. The dog owner shall bear the cost of this inspection.

**Section 16. Deposit and Use of Fines and Fees.** All fines and fees collected or received by the Borough pursuant to Sections 12 or 14 of this ordinance shall be deposited in a special account and used by the Borough to administer and enforce its provisions.

**Section 17. Inapplicability.** The provisions of this ordinance shall not apply to dogs used for law enforcement activities.

**Section 18. Severability.** Should any section, part or provision of this Ordinance be held unconstitutional or invalid by any Court, such holding shall not affect the validity of this Ordinance or any remaining part of this Ordinance as whole or in part, other than the part held unconstitutional or invalid.

**Section 19. Repealer.** All ordinances or parts thereof inconsistent with the provisions of this Ordinance are repealed to the extent of their inconsistencies.

**Section 20. Effective Date.** This Ordinance shall take effect 20 days after final passage and publication, according to law.

#### **NOTICE OF PENDING ORDINANCE**

The foregoing Ordinance was introduced at a Regular Meeting of the Board of Commissioners of the Borough of West Cape May held on October 14, 2015, when it was read for the first time and then ordered to be published according to law. This Ordinance will be further considered for final passage by the Board of Commissioners of the Borough of West Cape May at a meeting to be held at Borough Hall, 732 Broadway,

West Cape May, New Jersey on October 28, 2015, at 7:00 p.m. or as soon thereafter as possible, at which time and place, all persons interested will be given an opportunity to be heard concerning such ordinance.

Elaine L. Wallace  
Municipal Clerk