

ORDINANCE NO. 437

AMENDING CHAPTER 3

AN ORDINANCE AMENDING CHAPTER 3, ARTICLE II AND ARTICLE V OF THE CITY CODE, ENTITLED "ANIMALS"

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHARLOTTE, NORTH CAROLINA THAT:

Section 1: Article II and Article V. Animals of the City Code is amended as follows:

Sec. 3-33. Enforcement.

(a) *Methods.* This chapter may be enforced by one or more of the following methods, unless otherwise limited to a specific manner of enforcement by this section or chapter:

(1) *Civil citation.* Enforcement by civil citations shall be in accordance with the following:

a. Civil citations may generally be used to enforce any section of this chapter. Such citations may be used independently or in conjunction with any other enforcement method. Violations of the following sections may only be enforced by the issuance of a civil citation:

3-67(a)	Animals at city-sponsored events
3-70	Reckless riding or driving of animals
3-72(a)	Harboring stray animals
3-101	Failure to have city animal license
3-102	City permits
3-135(d)	Failure to comply with containment order

b. The penalties assessed by civil citations shall be in accordance with the escalating civil penalty table that follows. The civil penalty table applies to all violations that are enforced civilly, regardless of any other method of enforcement that may be additionally used. Each prior offense must be evidenced by the issuance of a civil citation or a criminal conviction arising from a prior offense before the next escalated penalty for subsequent offenses may be assessed. Penalties shall only escalate when the same offense has

been committed by the same owner in the past. No offense occurring more than ten years before the current offense shall be considered.

c. Each day that an ongoing violation continues shall be considered a separate violation from any previous or subsequent violation, and each separate violation may be the basis of a citation.

Owner's Offense	Penalty
First	\$50.00 fine
Second	\$75.00 fine
Third	\$150.00 fine and/or restraint measures in accordance with section 3-135
Fourth	\$250.00 fine and/or restraint measures in accordance with section 3-135 that shall include a secure enclosure if violation is of section 3-63, 3-66 or 3-71
Fifth	\$500.00 fine and seizure/forfeiture of the animal

(2) *Criminal misdemeanor.* A violation of this chapter may be punishable as a Class 3 misdemeanor and be subject to a maximum fine not to exceed \$500.00 pursuant to G.S. 160A-175 and G.S. 14-4.

(3) *Injunction.* The city may apply to the appropriate court for an injunction and order of abatement that would require that a violator correct any unlawful condition relating to this chapter existing on his property.

(4) *Seizure/forfeiture.* The following sections of this chapter may be enforced by the immediate seizure and forfeiture to the bureau of the animal that is the basis for a violation of the section:

3-61	Abandoned animals
3-62	Abuse of animals
3-63	Animal bite
3-66	Biting or attacking animals
3-69	Nuisance
3-71	Restraint of animals
3-101	License and rabies tags and fees
3-103	Permit for four or more dogs kept outside
3-132	Seizure, forfeiture and disposition of animals
3-139	Uncared-for animals

The manner of the seizure and the procedure by which the animal may be forfeited to the bureau is that set out in section 3-134 unless otherwise stated by the particular section authorizing the seizure and forfeiture. This subsection shall not be read to limit in any way any seizure or forfeiture authorized by the civil

escalating penalties table in subsection (a)(1) of this section.

(b) *Penalties.* The penalties assessed by civil citations shall be in accordance with the escalating civil penalty table that follows. The civil penalty table applies to all violations that are enforced civilly, regardless of any other method of enforcement that may be additionally used. Each prior offense must be evidenced by the issuance of a civil citation or a criminal conviction arising from a prior offense before the next escalated penalty for subsequent offenses may be assessed. Penalties shall only escalate when the same offense has been committed by the same owner in the past. No offense occurring more than ten years before the current offense shall be considered.

~~If payment, or appeal, or payment after appeal, for any civil citation is not made within 30 calendar days of the issuance of a civil citation or of the issuance of the appeal decision, the monetary penalty shall be double that stated in the escalating civil penalty table that follows in subsection (a)(1) of this section.~~ Issuance or payment shall be considered made when deposited with proper postage in the United States mail or when received by the person being cited or the city. The bureau manager or their designee may waive the doubling of the monetary penalty upon a showing that the tardiness of payment was not due to willfulness or neglect on the part of the cited person.

(c) *Exception.* Nothing in this chapter shall be construed to prevent sheriff deputies or law enforcement officers of any kind from enforcing any of the sections of this chapter or from exercising their authority as law enforcement officers.

### Sec. 3-133. Dangerous animal seizure and forfeiture procedure.

(a) *Probable cause notice required.* No animal shall be seized on the basis that it is dangerous or prejudicial to the public safety or public health without the prior issuance of a probable cause notice. This limitation shall not prohibit seizure based on other lawful authority, nor the subsequent issuance of a probable cause notice for an animal otherwise seized or impounded.

(b) *Probable cause notice.* Probable cause notices may only be issued by a person of supervisory rank with the bureau. The probable cause notice shall state the following:

- (1) The specific facts constituting probable cause for declaring the animal dangerous;
- (2) That a prompt hearing to determine whether or not the animal is dangerous shall be held as soon as possible;
- (3) That anyone in possession of the animal shall immediately turn the animal over to the bureau; and

- (4) If the animal's owner is known, the probable cause notice shall also order the owner to immediately contact the bureau and shall state the manner in which the bureau may be contacted.

The bureau shall notify the owner as soon as reasonably possible of the probable cause notice if the owner is known. If the owner is unknown, the bureau shall make reasonable efforts to determine who the owner is and try to notify the owner. If any bureau employee has any communication with the bureau manager about a particular case regarding a suspected dangerous animal, that employee shall keep a written report of the date and the content of any such communication.

- (c) *Owner's duties.* The owner shall turn the animal over to the bureau immediately upon receiving a probable cause notice. The bureau shall have the authority to seize immediately any animal for which a probable cause notice has been issued. It shall be unlawful for the owner or occupant of a premises to fail to give an animal to the bureau immediately upon the presentment of a probable cause notice.

- (d) *Authority to permit animal to remain on premises.* The supervisor who issued the probable cause notice shall have the authority to authorize that an animal may remain on the premises or elsewhere prior to the seizure/forfeiture hearing if the supervisor is satisfied that the animal's confinement shall be adequate for protecting the public and for the well-being of the animal. The supervisor who allows the animal to remain without seizure shall order the animal to be kept adequately confined and shall issue a containment order in compliance with section 3-135. A failure of the animal to be kept so confined shall result in the immediate seizure of the animal. The bureau shall always have the authority to summarily seize an animal after the probable cause notice has been delivered and before the seizure hearing.

- (e) *Request for hearing.* The owner of an animal subject to a probable cause notice shall have the right to a hearing to determine whether the animal shall be declared dangerous as defined in this chapter. The owner of the animal shall request a hearing by submitting a written request during normal working hours to the bureau within ten working days after the delivery of the probable cause notice or all reasonable efforts to deliver (delivery) the probable cause notice to the owner.

- (f) *Failure to request hearing.* If the owner fails to properly file a timely request for a hearing with the bureau, the bureau manager shall determine whether the animal is dangerous. The standard to be applied is whether, by a preponderance of the evidence, the animal is dangerous or prejudicial to the public safety or public health. The bureau manager shall make findings of fact to support the determination, and the determination shall be conclusive. The bureau manager may dispose of the animal as provided for in subsections (i) and (j) of this section. If the bureau manager, due to a conflict of interest or any other circumstance, is unable to make such determination, the bureau manager or the chief of police shall appoint a person to make the determination.

- (g) *Hearing.* Upon a proper and timely request, a hearing shall be held. The

supervisor who issued the probable cause notice or his designee shall present whatever relevant evidence the supervisor has that the animal should be declared dangerous. The owner shall be entitled to present whatever relevant evidence the owner wishes and to have legal representation. All testimony before the hearing officer shall be sworn testimony. The entirety of the hearing shall be recorded. If physical evidence is presented by either side, the hearing officer shall have such evidence photographed as part of the record and shall describe the item fully for the record.

(h) *Bureau manager as hearing officer.* The bureau manager shall be the hearing officer and shall conduct the hearing to determine whether the animal shall be declared dangerous or not. The bureau manager shall not function as the hearing officer if there is any conflict of interest or the appearance of such. The bureau manager shall determine whether it is necessary for the bureau manager to withdraw as a possible hearing officer, in which event the hearing officer shall be designated by the chief of police or his designee. The bureau manager shall disclose any facts, knowledge or any information known by the bureau manager regarding the particular situation for the record at the very beginning of the hearing. The bureau manager shall respond to any questions about any past knowledge about the particular situation. The appellant shall have the right to state for the record any specific findings of fact about the particular situation that the appellant believes precludes the bureau manager from conducting an impartial hearing of the case.

(i) *Decision and written orders.* The standard to be applied is whether, by a preponderance of the evidence, the animal is dangerous or prejudicial to the public safety or public health. The hearing officer's decision shall be supported by specific findings of fact and specific conclusions based upon the findings of fact. The bureau manager, if the bureau manager acts as hearing officer over the objections of the appellant, shall make specific findings of fact and conclusions regarding such objections for that particular case. All findings of fact must be supported by competent and material evidence in the record and must be included in the record.

The hearing officer shall issue a written order based on his decision. The written order shall declare whether the animal is found to be dangerous or prejudicial to the public safety or public health or nondangerous. If the animal is found to be dangerous or prejudicial to the public safety or public health, the hearing officer shall have the authority to terminate the owner's ownership rights in the animal and to dispose of the animal in accordance with this subsection, or the hearing officer may suspend the termination of ownership rights conditioned upon the owner's compliance with such terms as the hearing officer deems necessary to ensure that the animal may be kept by the owner in safety. If such terms are part of a written order suspending seizure/forfeiture, the terms and the written order shall comply with the requirements of section 3-135. The bureau manager shall have the authority to modify the terms when it is necessary to ensure the safety of the public. The termination of ownership rights may be invoked upon the failure to comply with any of the terms. Written orders shall include the following statements:

- (1) Whether the animal is dangerous and prejudicial to the public safety or health or nondangerous. (If nondangerous, nothing further is required.)
  - (2) That the bureau has the authority to terminate ownership rights of the animal and to order the humane destruction of the animal.
  - (3) Whether the ownership rights are being presently terminated or if such termination is suspended.
  - (4) If the termination is suspended, the terms and condition on which the termination is suspended in compliance with section 3-135.
  - (5) That a failure to comply with the written order could result in termination of ownership rights and humane destruction of the animal.
  - (6) That any appeal to the superior court of the hearing officer's decision must be filed within 1030 days.
- (j) *Disposition of animal.* The bureau manager shall have the discretion to dispose of any animal forfeited to the bureau under this section in one of only two specific ways:
- (1) By humane destruction of the animal; or
  - (2) By giving the animal to an individual or an organization subject to the protective and inspection conditions required by the bureau manager for the well-being of the animal, for the protection of the public and for the purpose of preserving and taking care of the animal. Such conditions shall reserve the bureau's right to seize and humanely destroy the animal upon any failure to comply with the conditions. An animal declared to be dangerous by the bureau manager shall not be disposed of for research or experimental purposes.
- (k) *Appeal to superior court.* The decision of the bureau manager or of the city manager or his designee shall be subject to review by the superior court by proceedings in the nature of certiorari. Any petition for writ of certiorari for review by the superior court shall be filed with the clerk of superior court within 1030 days after delivery of or reasonable efforts to deliver the decision to the owner or the owner's representative. Prior to the filing of the petition for writ of certiorari with the clerk of superior court, a cash bond must be provided to the city for all costs incurred thus far by the city's retention of the animal and for an approximate time for the course of the appeal, as well as for the cost of the transcript prepared for the court. The city shall reimburse the petitioner for the cost of the petitioner's transcript and the court's transcript if the court reverses the decision and determines that the animal is not dangerous. If a petition for writ of certiorari is filed in superior court, the animal shall be confined at the animal shelter or at a location solely acceptable to the bureau. Appeal shall not toll compliance with any written or containment order pending the hearing of such appeal.

Section 2: This ordinance shall become effective January 1, 2023.

Approved as to form:



Sr.City Attorney

**CERTIFICATION**

I, Stephanie C. Kelly, City Clerk of the City of Charlotte, North Carolina, DO HEREBY CERTIFY that the foregoing is a true and exact copy of an Ordinance adopted by the City Council of the City of Charlotte, North Carolina, in regular session convened on the 28<sup>th</sup> day of November 2022, the reference having been made in Minute Book 157, and recorded in full in Ordinance Book 65, Page(s) 342-348.

WITNESS my hand and the corporate seal of the City of Charlotte, North Carolina, this 28<sup>th</sup> day of November 2022.



Stephanie C. Kelly, City Clerk, MMC, NCCMC