

**CITY OF POLSON
ORDINANCE 2019 No.004
TO AMEND POLSON MUNICIPAL CODE CHAPTER 13
Sec. 13.02.010; AND TO INCORPORATE
Sec. 13.02.180 INTO POLSON MUNICIPAL CODE CHAPTER 13
REGARDING ANIMALS**

WHEREAS, the City of Polson determines that it is the public interest to amend POLSON MUNICIPAL CODE Sec. 13.02.010; and to incorporate Sec. 13.02.180; and

WHEREAS, the Amendment and Incorporation will promote the public health, safety and welfare of the citizens of Polson;

NOW, THEREFORE, BE IT ORDAINED by the City Commission of the City of Polson, Montana, that POLSON MUNICIPAL CODE, Chapter 13, Sec. 13.02.010 be revised to read as shown on Exhibit A; and that POLSON MUNICIPAL CODE, Chapter 13, Sec. 13.02.180 be incorporated to read as shown on Exhibit B.

Date: October 7, 2019

First Reading: 6 ayes _____ nays _____ abstentions

Date: October 21, 2019

Second Reading: 6 ayes _____ nays _____ abstentions

Effective Date: November 21, 2019

Mayor Paul Briney

Attest:

City Clerk Cora E. Pritt

Sec. 13.02.010. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Animal means any live creature, both domestic and wild, except humans. The term "animal" includes fowl, fish, and reptiles.

Animal shelter means any premises provided by, or contracted via, the city for impounding and caring for dogs and other animals, or any facility which contracts with the city to provide such services.

Animal shelter director means the operator of a facility contracting with the city to provide the services of an animal shelter.

At large means that an animal is off the premises of the owner, keeper, or responsible custodian of the animal and not on a leash or confined within a kennel, cage, or motor vehicle, or otherwise under the immediate control of a person physically capable of restraining the animal.

Code enforcement officer means all peace officers as that term is defined in state law as well as all duly appointed code enforcement officers, animal control supervisors appointed by the city to carry out and enforce this article, or other officials designated by the chief of police.

Cruelty means any act or omission whereby unjustifiable physical pain, suffering, or death of an animal is caused or permitted.

Dangerous or vicious animal means any animal that attacks, bites, or injures human beings, domestic animals, or livestock without adequate provocation, or which, because of its nature, temperament, training, or other characteristics, would constitute an unreasonable danger to human life or property if not kept, maintained, or confined in a safe and secure manner. Any animal that, without provocation, has aggressively bitten or caused any physical injury to any person shall be prima facie presumed vicious or dangerous.

Kennel means any premises wherein any person engages in the business of boarding, breeding, buying, letting for hire, training for a fee, or selling dogs, cats, or other animals (excluding licensed pet shops). The term "kennel" shall also include any noncommercial establishment or place where more than three dogs and/or four cats are kept over the age of six months, whether for breeding or otherwise.

Leash means a line, chain or leads used to control or restrain an animal and does not include an electronic leash or shock collar.

Muzzle means a humane device, securely fastened over the mouth of an animal, which prevents the animal from biting.

Nuisance means any animal that unreasonably annoys humans, endangers the life or health of persons or other animals, or substantially interferes with the rights of citizens, other than their owners, to enjoyment of life or property. The term "nuisance" shall include, but not be limited to:

- a. Any animal that is repeatedly (more than two separate occurrences) found running at large;
- b. Any dog in any section of a park or public recreation area which is not controlled by a leash or similar physical restraint, except in such parks or public areas designated exempt;
- c. Any animal that damages, soils, defiles, or defecates on any property other than that of its owner, with the exception of service animals authorized under the Americans with Disabilities Act;
- d. Any animal that makes disturbing noises including, but not limited to, continued and repeated howling, barking, whining, crowing or other utterances causing unreasonable annoyance or discomfort to neighbors or others in close proximity to the premises where the animal is kept or harbored;
- e. Any animal in heat that is not confined so as to prevent attraction or contact with other animals;

- f. Any animal, whether or not on the property of its owner, that without provocation, molests, attacks, or otherwise interferes with the freedom of movement of persons in a public right-of-way;
- g. Any animal that chases motor vehicles in a public right-of-way;
- h. Any animal that attacks domestic animals;
- i. Any animal that causes unsanitary conditions in enclosures or surroundings where the animal is kept or harbored;
- j. Any animal that is offensive or dangerous to the public health, safety, or welfare by virtue of the number of animals maintained at a single residence or the inadequacy of the facilities.

Owner means a person who has an interest in an animal, whether legal or equitable. A person who holds an animal for the benefit of or as an agent for another is not an owner. An owner with power to convey an animal binds other owner, and a spouse binds his or her spouse, by his or her act or omission. ~~means any person, group of persons, or corporation having temporary or permanent custody of, sheltering or having charge of, harboring, exercising control over, or having property rights to, any animal covered by this article.~~

Under restraint means that an animal is secured by a leash not to exceed six feet in length or securely enclosed within the real property limits of the owner's premises.

EXHIBIT B

Sec. 13.02.180. – Animal cruelty and neglect.

(a) A person commits animal cruelty if the person does any of the following:

(1) Intentionally, knowingly or recklessly subjects any animal under the person's custody or control to cruel neglect or abandonment; (2) Intentionally, knowingly or recklessly fails to provide medical attention necessary to prevent protracted suffering to any animal under the person's custody or control; (3) Intentionally, knowingly or recklessly inflicts unnecessary physical injury to any animal; (4) Recklessly subjects any animal to cruel mistreatment; (5) Intentionally, knowingly or recklessly kills or attempts to kill any animal under the custody or control of another person without either legal privilege or consent of the owner; (6) Recklessly interferes with, strikes, kills or harms a working or service animal without either legal privilege or consent of the owner; (7) Intentionally, knowingly or recklessly leaves an animal unattended and confined in a motor vehicle and physical injury to or death of the animal is likely to result; (8) Recklessly allows any dog that is under the person's custody or control to interfere with, kill or cause physical injury to a service animal; (9) Strikes any domestic animal with a vehicle resulting in injury to the animal, and leaves the scene without rendering aid and assistance in the care of such animal, if such action can be taken with reasonable safety. For purposes of this section, "domestic animal" shall mean an animal usually domiciled with or cared for by humans, such as cat, dog, horse or cattle; (10) Intentionally or knowingly poisons or attempts to poison any domestic animal. For purposes of this section, "poison" or "attempt to poison" includes the act of placing food, water, or lure of another sort which contains poison or contains health threatening foreign objects, such as glass or metal, in a location where any animal may be attracted to it; (11) Intentionally, knowingly or recklessly uses a baited trap or mechanical device to capture an animal, causing it injury or death.

(b) It is not a defense to subsection (a) of this section if: (1) The animal was trespassing on property owned or controlled by the person alleged to have violated this section; (2) The animal was not restrained in compliance with any leash law; (3) The person alleged to have violated this section did not know that the animal was under the custody or control of another person;

(c) Neglect. The purpose of this subsection is to guarantee that animals under human custody or control are housed in healthy environments and are provided with proper food, water, shelter, medical care, exercise space and ventilation. Any person owning or having care, control or custody of any animal shall provide: (1) That the animal receives daily, food that is free from contamination and is of sufficient quantity and nutritive value to maintain the animal in good health; (2) That potable water is accessible to the animal at all times, either free-flowing or in a clean receptacle; (3) That, except for livestock, all animals have convenient access to natural or artificial shelter throughout the year. Any such artificial shelter shall be structurally sound and maintained in good repair to protect the animal from injury and from the elements, and of sufficient size to permit the animal to enter, stand, turn around and lie down in a natural manner. Any shelter which does not protect the animal from temperature extremes or precipitation, or which does not provide adequate ventilation or drainage, shall not comply with this section. Any shelter, all bedding and any spaces accessible to the animal shall be maintained in a manner which minimizes the risk of the animal contracting disease, being injured, or becoming infested with parasites; (4) That the animal receives care and medical treatment for debilitating injuries, parasites and diseases, sufficient to maintain the animal in good health and minimize suffering; (5) That the animal is given adequate exercise space within an enclosure that shall be constructed of material, and in a manner, to minimize the risk of injury to the animal, and shall encompass sufficient usable space to keep the animal in good condition; (6) That the animal has access to adequate ventilation and is protected from temperature extremes at all times. In this connection, it is unlawful for any person to keep any animal in a vehicle or other enclosed space in which the temperature is either so high or so low, or the ventilation is so inadequate, as to endanger the animal's life or health. Any peace officer or animal care officer is authorized to use whatever force is reasonable and necessary to remove any animal from a vehicle or other enclosed space whenever it appears that the animal's life or health is endangered by extreme temperatures or lack of ventilation within the vehicle or other enclosed space. a. No peace officer, code compliance officer or animal care officer shall be liable for damages to property caused by the use of reasonable force to remove an animal from such a vehicle or other enclosed space under such circumstances.

(d) Subsection (b) paragraphs (1) and (2) of this section may be waived by any peace officer, code compliance officer or an animal care officer if dictated by treatment under the direction of a licensed veterinarian. (e) Any person violating the provisions of this section shall be guilty of a misdemeanor. (f) Penalties. A violation of any provision of this section is punishable by a fine of not less than fifty dollars (\$50.00) nor more than two thousand five hundred dollars (\$2,500.00), six (6) months in jail, three (3) years' probation, or any combination thereof. No judge may grant probation in lieu of, or otherwise suspend, the imposition of the minimum fine prescribed herein. The judge may order that the owner shall not be permitted to own or control any animal for a period of up to three (3) years, and the judge may order that the animal(s) which are the subject of this action be forfeited to the Humane Society or other suitable agency to be placed by adoption in a suitable home or humanely destroyed. The court also shall order the convicted person to make restitution to the city or to any person, agency, or volunteer who has contracted with the city to care for an animal that is seized and impounded pursuant to this or other provisions of this section for the cost of care for the animal incurred from the time of seizure or impoundment to the time of conviction. This shall not be construed to affect, in any way, the imposition of any mandatory minimum penalties provided herein.