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Municipal Animal Control

Animals are the source of many problems for municipal officials and there is no reason to expect the situation to change. Municipal officials should be aware of the latest laws relating to animal control. This article summarizes the laws relating to municipal animal control.

Municipal Control of Dogs

Ordinary dogs having no vicious or mischievous propensities are free commoners which the owner or keeper is under no duty to keep out of the public streets, in the absence of a statute or an ordinance so requiring. *Owen v. Hampson*, 62 So.2d 245 (Ala. 1952). By local option, the county governing body of any county may prohibit dogs from running at large except in cities and towns that require a license tag to be kept on dogs. Section 3-1-5, Code of Alabama 1975. Section 3-1-5 was held constitutional in *State v. Golden*, 531 So.2d 941 (Ala. Crim. App. 1988).

Section 11-45-1, Code of Alabama 1975, gives municipalities the authority to adopt ordinances to protect the public health, safety and welfare. Alabama's rabies protection statute, found at Sections 3-7A-1 through 3-7A-15 of the Code states: "Nothing in this chapter shall be held to limit in any manner the power of any municipality to prohibit dogs or cats from running at large, regardless of rabies immunization status as herein provided; nor shall anything in this chapter be construed, in any manner, to limit the power of any municipality to further control and regulate dogs or cats in such municipality." Section 3-7A-14, Code of Alabama 1975.

Express statutory authority is given to municipalities to regulate and prevent dogs from running at large on the streets and to pass all laws necessary for the impounding and sale of the animals. Municipalities may also regulate the destruction of dogs. Section 11-47-110, Code of Alabama 1975.

The Alabama Supreme Court in *Birmingham v. West*, 183 So. 421 (1938), upheld a Birmingham dog ordinance requiring all dogs kept in the city to be inoculated against rabies before a certain date each year; that the owner or keeper of a dog procure a dog license for the animal at a fee of $1, even though the dog was not allowed to run at large; and that a redemption fee of $3 plus board must be paid for dogs impounded for violation of the ordinance. The court pointed out that while the ordinance was more stringent than state law on the subject, it was not in conflict with state law and therefore did not violate Section 89, Alabama Constitution, 1901, which is not intended to limit the police power of a municipality but to prohibit a municipality from making lawful that which state law renders unlawful.

The extent to which a municipality may regulate dogs is left largely to the legislative discretion of the municipal governing body. Such ordinances are adopted under the municipal police power and Alabama courts are reluctant to examine the wisdom or propriety of such laws unless they are palpably unreasonable. The authority of a municipal governing body to regulate dogs extends throughout the corporate limits and police jurisdiction and on any property or rights of way belonging to the city or town. Section 11-40-10, Code of Alabama 1975.

The Attorney General's office has held that a municipality may prohibit the keeping of vicious dogs in the municipality. It may also require that the dog be kept secure, and require removing vicious and dangerous dogs from the municipality. AGO 1999-0078.

Act 2026-427, codified in Sections 3-6B-1 through 3-6B-7, Code of Alabama 1975, enacts minimum requirements for tethering and confining dogs. For example, the act prohibits tethering a dog to a stationary object unless the dog is tethered via a trolley system and requires any dog tethered or confined outside to have access to shelter that complies with the act. The act also permits a municipality to appoint one or more animal control officers to investigate alleged violations. An investigating officer shall not be required to be a certified law enforcement officer. Upon a determination of probable cause that a violation of the act has occurred, a certified law enforcement officer, including those serving as animal control officers, may either remove the dog from its present location if the investigating officer believes the animal's life is in danger or order the owner to provide care to the dog at the owner's expense.

State Statutes on Animal Control

Title 3 of the Code of Alabama 1975 is titled "Animals" and includes general provisions, statutes on estrays, branding and the fencing and control of livestock.

Sections 3-1-1 and 3-1-4 of the Code prohibit the keeping of any dog which has been known to kill or worry other stock, establish fines and a penalty of double the value of all stock killed and prescribe action for the killing of such dogs.

Section 3-1-2 imposes penalties for the keeping of rabid dogs which cause damage to people or stock. Section 3-1-3 subjects the owner of a vicious animal to civil damages for injuries caused by such animals.

Section 3-1-5 deals with dogs running at large but exempts dogs within the corporate limits of a municipality which requires a license tag to be kept on dogs.

Section 3-1-7 states that the proprietors and owners of places of public accommodation, amusement or recreation (such as hotels, restaurants, stores, theaters, etc.) must not refuse to permit a guide dog to accompany a visually impaired person entering such a place. The dog is required to wear a harness and the dog owner must present for inspection credentials issued by an accredited school for training guide dogs. Violation of this statute constitutes a misdemeanor and subjects the violator to a fine not to exceed $50.

The wanton or malicious killing or injuring of animals is outlawed by Section 3-1-10, which authorizes fines up to $1,000 and sentences of not more than six months. Section 3-1-13 permits employees of recognized humane societies to take up and care for animals cruelly treated or abused and imposes a lien on the owner for such service.

Cruelty to animals is covered by Section 13A-11-14 and Sections 13A-11-240 through 247, Code of Alabama 1975.

Section 3-1-15 prohibits the sale of baby rabbits, baby chicks, baby ducks or fowl as pets or novelties and makes such transactions a misdemeanor.

The theft of animals or lost animals is covered by Sections 13A-8-3 through 13A-8-5 and Sections 13A-8-7 through 13A-8-9.

The Attorney General's office has held that a county commission has the authority to provide comprehensive animal control in unincorporated areas of the county. AGO 1997-0262.

Owner's Liability for Dog Bites

The owner of a dog is liable for injuries caused if the dog bites or injures any person who is lawfully on the owner's property. Provocation of the injury may be offered as a defense, and lack of knowledge of the dog's propensity to commit such an act may be offered in mitigation of damages. *See,* Sections 3-6-1 through 3-6-4, Code of Alabama 1975; s*ee also, Kent v. Sims*, 460 So.2d 144 (Ala. 1984). This is known as the "Postman's Law."

Emily's Law – Dangerous Dogs

In 2018, "Emily's Law" was enacted and codified in Sections 3-6A-1 through 3-6A-8, Code of Alabama 1975. Emily's Law sets out a procedure for animal control officers or other law enforcement officers to conduct dangerous dog investigations. If the investigation causes the animal control officer or law enforcement officer to conclude that a dog is dangerous, the complainant is advised of the findings and the investigation results are submitted to the supervisor. *See*, Section 3-6A-4, Code of Alabama 1975.

The municipal attorney or municipal prosecutor may file a petition in municipal court or district court to declare the dog dangerous, and a hearing is held to determine whether the dog is dangerous. *See*, Section 3-6A-4, Code of Alabama 1975.

At the court hearing, the municipal attorney or municipal prosecutor shall present evidence that the dog is dangerous. If the court finds by a reasonable satisfaction that the dog bit, attacked, or caused physical injury, serious physical injury, or death to a person without justification, the court shall order the dog to be humanely euthanized by a licensed veterinarian or an authorized animal control official. *See*, Section 3-6A-4, Code of Alabama 1975.

If the court determines that the dog is dangerous, but it has not caused serious physical injury or death to a person, the court shall determine whether the dog has a propensity to cause future serious physical injury or death. If the court determines by reasonable satisfaction that the dog has such a propensity, the court may order the dog to be humanely euthanized by a licensed veterinarian or an authorized animal control officer, or the court may order the dog be returned to its owner pursuant to all of the following conditions:

- The dangerous dog shall be microchipped.
- The owner of the dangerous dog shall provide a copy of the certificate of the current rabies vaccination of the dog.
- The dangerous dog shall be spayed or neutered.

- The owner of the dangerous dog shall be required to pay all expenses involved with the investigation, pickup, and impoundment, and any court costs or fees related to the hearing to determine whether the dog is dangerous.
- The owner of the dangerous dog shall be required to pay an annual dangerous dog registration fee of one hundred dollars ($100) to the county or municipality for a dog deemed dangerous by a court or pay a penalty of one hundred dollars ($100) to the county or municipality for non-registration within two weeks.
- The owner shall be required to obtain a surety bond of at least one hundred thousand dollars ($100,000) and shall provide proof to the court or animal control office. *See*, Section 3-6A-4, Code of Alabama 1975.

Rabies Statute

The rabies control statute found in Sections 3-7A-1 through 3-7A-15, Code of Alabama 1975, imposes the duty upon the county board of health with the approval of the state health officer and the state veterinarian to appoint in January of each year a duly-licensed veterinarian who shall be known as the county rabies officer. The officer's term of office runs until December 31 of the year of appointment, and he or she is charged with the duty of enforcing the statute within the county. The county rabies officer has the authority to appoint deputies. The county sheriff and police officers of each municipality are declared to be aides for the enforcement of the law and are instructed to cooperate with the officer.

Animals required to be inoculated by the state rabies statute include all members of the canine family three months of age and all members of the feline family three months of age.

Every owner of an animal required to be inoculated for rabies shall have the animal inoculated by the rabies officer, his or her authorized representative, or any duly-licensed veterinarian when the animal reaches three months of age and annually thereafter. The owner receives a certificate of inoculation and a rabies tag. The tag must be attached to the animal's collar or harness and worn at all times. The vaccination of animals for rabies shall be good for one year. Provision is made for the replacement of lost tags. The fee for inoculation is established prior to the first day of January of each year by a committee composed of the state health officer, the state veterinarian and the president of the Alabama Veterinary Medical Association.

Any animal not wearing a current tag and for which no certificate of inoculation can be produced that is apprehended by an officer charged with enforcing the rabies law, shall be subject to a penalty not to exceed an amount equal to twice the inoculation fee set by the state. The penalty is imposed by the rabies officer on the owner of the animal, in addition to the fee charged for inoculation.

The penalty shall accrue to the rabies officer or his agent except in cases of rabies officers who are employed full time on salary. In that case, the penalty accrues to the employing agency or agencies.

The law requires every county to provide a suitable county pound for the impoundment of all animals found running at large in violation of the rabies statutes. Every municipality over 5,000 in population, in which a county pound is not located, shall maintain a suitable pound or contribute their pro rata share to the staffing and upkeep of the county pound. A municipality with a population of less than 5,000 is not required to maintain an animal control service. A municipality may, by ordinance, establish regulations regarding animal control services and contract with an independent contractor to perform animal control services. AGO 2005-0172.

The impounding officer is required to give not less than seven days notice of the impoundment, in some form or manner. If the owner of the animal is known, direct notice is required.

All animals which have been impounded for lack of rabies inoculation in accordance with the law and which are not redeemed by the owner within seven days may be humanely dispatched and disposed of, provided the owner was given the required notice. Owners may redeem impounded animals by paying for the inoculation of the animal (if a certificate of inoculation cannot be produced), paying the penalty prescribed and the board bill. The amount paid for the board of the animal shall accrue to the city or county, depending upon the pound in which the animal was confined. The impounding officer may sell any animals not redeemed within the seven-day period rather than dispatch them. The purchaser must pay the inoculation fee penalty and board bill. Section 3-7A-8, Code of Alabama 1975.

Whenever the rabies officer or county health officer receives information that a person has been bitten by an animal required to be inoculated against rabies, the county health officer is required to have the animal put in quarantine with a duly licensed veterinarian for observation of rabies. It is illegal for any person having knowledge of such an animal bite to refuse to promptly notify the proper officials. It is also unlawful for the owner of the animal to refuse to follow the instructions of the rabies officer or other health officials or to sell, give away, transport to another area or otherwise destroy the animal until it is released from quarantine.

Instructions for quarantine of the offending animal must be delivered in person or by telephone to the owner of the animal by the rabies officer or his authorized agent. If instructions cannot be delivered this way, they shall be mailed by regular mail, postage prepaid and addressed to the owner. Any expenses incurred in the quarantine are to be borne by the owner.

The veterinarian under whose care the offending animal has been committed for quarantine shall report the results of the observation to the attending physician of the person bitten.

Canine corps dogs and seeing eye dogs shall be exempt from the quarantine period where the bite occurred in the line of duty and evidence of proper vaccination against rabies is presented. However, a licensed veterinarian must examine the dog at the end of the 10 days.

Any person violating or aiding in or abetting the violation of the provisions of the rabies laws is subject to prosecution in any court of competent jurisdiction, including municipal courts.

Upon request of proper local officials, the state health officer may place certain areas of the state under a rabies quarantine to prevent the spread of the disease. In serious situations, an area may be placed under quarantine without waiting for a local request.

Dogs in Outdoor Dining Areas

Act 2021-474, codified in Section 22-20-5.3, Code of Alabama 1975, permits pet dogs in outdoor dining areas of restaurants under certain circumstances. First and foremost, the owner of the restaurant must elect to allow pets in outdoor dining spaces by filing a waiver with the State Health Department. To allow for dogs in outdoor dining areas, the restaurant must have a separate entrance where a pet dog and owner can into without going through the restaurant to reach the outdoor dining area. In addition, the restaurant must post a prominent sign to put the public on notice that there is a designated outdoor dining area available for use by patrons with pet dogs. The law specifically provides that pet dogs may not be allowed on the chairs, benches, seats or other fixtures in the outdoor dining area. Other requirements include the following:

1. The outdoor dining area cannot be used for food preparation or storage of utensils.
2. The outdoor dining area where pet dogs are allowed must be at least 12 feet away from any bar or other area where beverages are served.
3. Employees must refill beverages from a pitcher or other container at the table in the outdoor dining area where dogs are allowed.
4. The outdoor dining area must be well maintained, kept clean, and all surfaces that have been contaminated by pet excrement or other pet bodily fluids are properly cleaned and sanitized.
5. Dogs must be kept on a leash or confined in a carrier at all times.
6. The restaurant must comply with all local ordinances related to sidewalks, public nuisances, and sanitation.
7. Food service employees should have no direct contact with a pet dog while on duty.

In addition to allowing for pet dogs in outdoor dining spaces, Act 2021-474 also prohibits a state or local health department from prohibiting the serving of wine or beer, including draft beer, in a restaurant that allows pet dogs or in a dog park if the restaurant or park are otherwise authorized and licensed to serve wine or beer for on-premises consumption.

Municipal Control of Animals Other than Dogs

Section 11-47-110, Code of Alabama 1975, authorizes municipalities to regulate and prevent the running at large on the streets "all equine or equidae, cows, hogs, dogs or other animals" and provides for the impoundment and sale of such animals. This statute also authorizes destruction of dogs and the regulation of the movement of livestock in droves through a municipality.

In 2023, the Alabama Legislature amended the state statute on livestock and animals running at large to specifically limit municipal enforcement of ordinances which may provide for broader standards than those authorized under the state statute. Specifically, Section 3-5-2, Code of Alabama 1975, provides that no municipal governing body may adopt or continue in effect any ordinance that is inconsistent with the state statute. State law provides that a person can only be convicted of a violation of Section 3-5-2 if they "unlawfully and knowingly" permit an animal to run at large. Any municipal ordinance that makes it a violation to allow an animal to run at large under any standard other than "unlawfully or knowingly" cannot be enforced.

Municipal police power which once extended to the regulation and prohibition of the keeping of livestock where the regulation or prohibition is reasonable and related to the public health, safety and welfare has also been somewhat curtailed. Except as otherwise provided by state or federal law, the entire subject matter concerning the care and handling of livestock and animal husbandry practices involved in the production of agricultural and farm products on private property shall be reserved to the Department of Agriculture and Industries and the State Board of Agriculture and Industries and shall be subject to the sole jurisdiction of the department and board. Ordinances in effect before July 1, 2010 are not affected, repealed, superseded or overridden and will remain effective. A municipality is not precluded or prohibited from hereinafter

enacting an ordinance, concerning zoning, business licenses, or the enforcement of public nuisances. Section 2-15-5, Code of Alabama 1975. A farm or farm operation shall not be deemed to be or become a public or private nuisance for purposes of Section 6-5-127, Code of Alabama 1975, or any other law, or be deemed in violation of any municipal or county ordinance or resolution heretofore or hereafter adopted declaring any farm or farm operation a public or private nuisance other than a zoning ordinance. Section 2-6B-3, Code of Alabama 1975. Livestock markets in Alabama are regulated by the Commissioner of Agriculture and Industries under provisions of Title 2, Code of Alabama 1975. Municipalities, nevertheless, under zoning ordinances, can control the location of such markets. Normally, zoning laws only permit such operations in industrial areas.

Cruelty to Dogs and Cats

Section 13A-11-14, Code of Alabama 1975 establishes the crime of cruelty to animals. Sections 13A-11-240 through 13A-11-247, Code of Alabama 1975, more specifically establish the crimes of cruelty to a dog or cat and of intentional extreme cruelty to a domesticated dog or domesticated cat. The law also provides for penalties in the first and second degree. A person commits the crime of cruelty to a dog or cat in the first degree if he or she tortures any dog or cat with the intent to inflict intense pain, serious physical injury or death upon the dog or cat or skins a domestic dog or cat or attempts to sell their fur or hide. Cruelty in the first degree is a Class C felony. A person commits the crime of cruelty to a dog or cat in the second degree if they behave in a cruel manner or deprive the necessary sustenance or shelter, unnecessarily or cruelly beat any dog or cat. Cruelty in the second degree is a Class A misdemeanor.

Any municipality may appoint one or more trained agents to inspect alleged violations of this law. Any appointment made pursuant to this section shall be made at a meeting of the local governing body duly called with notice. In the event a law enforcement officer or agent has reasonable belief or evidence of or having found a dog or cat to be neglected or cruelly treated may either remove the animal from its present location or order the owner to provide certain care to the animal at the owner's expense. Within 20 days of seizure of the animal, a hearing shall be set. This law also provides individuals immunity under certain situations.

Selected Case law and Attorney General's Opinions

- Municipalities may, by ordinance, provide for the destruction of dogs running at large if destruction is necessary to protect the health and safety of its citizens. AGO 1991-0204.
- In order to control or eliminate stray dogs, a municipality should provide, by ordinance, for the impounding and/or destruction of such dogs. AGO 1991-0318. Counties are responsible for the expense of maintaining a county pound. However, a municipality with over 5,000 in population must contribute a pro rata share for maintaining the pound or maintain its own pound. The county is responsible for the costs of maintaining an animal that was not redeemed by its owner or sold. AGO 1990-0308.
- Animal control officers that are not commissioned by the governing body to be law enforcement officers do not have arrest powers other than those of a private citizen pursuant to Section 15-10-7 of the Code of Alabama. AGO 2007-0054.
- A statute criminalizing the commercial creation, sale, or possession of depictions of animal cruelty regulated expression based on content, and thus, the statute was presumptively invalid under the First Amendment, and the Government had the burden of rebutting that presumption. *U.S. v. Stevens*, 130 S.Ct. 1577 (U.S.2010).
- A person employed by the county commission as an animal control officer is under the supervision of the county commission regardless of whether that person is commissioned as a deputy sheriff under Section 3-1-16 of the Code of Alabama. AGO 2009-0066.