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CITY of NOVI CITY COUNCIL

Agenda Item 2
February 28, 2011

SUBJECT: Consideration of Ordinance 11-108.05, as recommended by the Ordinance Review Committee, to amend Chapter 5 of the City of Novi Code of Ordinances to establish regulations for animals in the City of Novi, to provide for the public health, safety, and welfare of the community through the proper control of animals by their owners and others, and to provide for penalties for the violation of such regulations. **FIRST READING**

SUBMITTING DEPARTMENT: City Clerk / Public Safety Administration *m.c.*

CITY MANAGER APPROVAL: *[Signature]*

BACKGROUND INFORMATION:

The City Council referred the City's current Animal ordinance, found in Chapter 5 of the City Code, to the Ordinance Review Committee for evaluation and possible amendment. Currently, the ordinance applies primarily to dogs and cats, although it does have a general prohibition on the keeping of dangerous animals and a general prohibition on cruelty to animals.

At the same meeting at which City Council referred that issue to the Ordinance Review Committee, the Council also heard from a resident who noted that a neighbor was raising chickens in his backyard in a residential area.

The Ordinance Review Committee met initially on November 15, 2010 and then again on February 11, 2011 to discuss the proposed ordinance. The attached proposed ordinance for consideration and First Reading does the following:

- Retains the prohibition against keeping "dangerous" animals
- Clarifies the process for dealing with violations in the local district court
- Updates definitions for use throughout the ordinance
- Clarifies the penalties for offenses, using a graduated amount for the first, second, and third or subsequent offenses (with smaller amounts for more minor violations, like noise and sanitation violations)
- Clarifies sanitation requirements

The proposed ordinance also includes regulations for the keeping of certain animals that are not household pets (such as dogs and cats), but that are otherwise authorized by the zoning ordinance as accessory to a single family use (e.g., a limited number of chickens). As a result of the review of the City's regulations on this general subject, City staff will discuss with the Planning Commission a review of the zoning ordinance requirements for such animals.

The Ordinance Review Committee considered adopting breed-specific regulations for certain kinds of dogs (e.g., pit bulls). The Ordinance Review Committee is not, however, recommending that sort of regulation in the attached ordinance.

RECOMMENDED ACTION: Approve **FIRST READING** of Ordinance 11-108.05, as recommended by the Ordinance Review Committee, to amend Chapter 5 of the City of Novi Code of Ordinances to establish regulations for animals in the City of Novi, to provide for the public health, safety, and welfare of the community through the proper control of animals by their owners and others, and to provide for penalties for the violation of such regulations

	1	2	Y	N
Mayor Landry				
Mayor Pro Tem Gatt				
Council Member Fischer				
Council Member Margolis				

	1	2	Y	N
Council Member Mutch				
Council Member Staudt				
Council Member Wrobel				

STATE OF MICHIGAN
COUNTY OF OAKLAND
CITY OF NOVI
ORDINANCE NO. 11-108.05

AN ORDINANCE TO AMEND CHAPTER 5 OF THE CITY OF NOVI CODE OF ORDINANCES, "ANIMALS," TO ESTABLISH REGULATIONS FOR ANIMALS IN THE CITY OF NOVI; TO PROVIDE FOR THE PUBLIC HEALTH, SAFETY, AND WELFARE OF THE COMMUNITY THROUGH THE PROPER CONTROL OF ANIMALS BY THEIR OWNERS AND OTHERS; AND TO PROVIDE PENALTIES FOR THE VIOLATION OF SUCH REGULATIONS.

THE CITY OF NOVI ORDAINS:

PART I

That Chapter 5, Animals, of the City of Novi Code of Ordinances is hereby amended to read as follows:

ARTICLE I-IN GENERAL

Section 5.1-Purpose.

The purpose of this Ordinance is to promote the public health, safety, comfort, and general welfare of the community through the proper control of animals by their owners and others.

Section 5.2-Definitions.

The following words, terms, and phrases, when used in this Ordinance, shall have the meanings respectively ascribed to them below:

Animal shall mean any vertebrate other than human beings.

At large shall mean any animal that is off the property of its owner and not under the physical control of a competent person.

Dangerous animal means any wild mammal, reptile, or fowl that is not naturally tame or gentle but is of a wild nature or disposition and that, because of its size, vicious nature, or other characteristics, could constitute a danger to human life or property. The term "dangerous animal" also means and includes any domestic mammal, reptile, or fowl that, because of its size or vicious propensity or other characteristics, could constitute a danger to human life or property.

Dangerous or vicious dog shall mean any dog that is exposed to rabies, or any dog that is capable of inflicting death or serious injury on a person or domesticated animal and that:

- (a) Has, without provocation, attacked or bitten a person engaged in lawful activities;
- (b) Has left the property of its owner and, without provocation, killed or seriously injured another animal;
- (c) Has, without provocation, chased, confronted or approached a person on the street, sidewalk, or public property in a menacing fashion that would put a reasonably prudent person in fear of an attack;
- (d) Has exhibited a propensity, tendency, or disposition to attack, cause injury, or threaten the safety of persons or other domesticated animals without provocation; or
- (e) Has acted in a manner that causes or should cause its owner to know that it is potentially vicious and/or dangerous.

No dog shall be declared "dangerous" for any of the following reasons alone:

- (a) If the dog was protecting or defending a person within the immediate vicinity of the dog from attack or assault;
- (b) If at the time another person was committing a crime or offense upon the property of the owner, or custodian, of the dog;
- (c) If the person was teasing, tormenting, abusing, or assaulting the dog, or in the past had teased, tormented, abused, or assaulted the dog;

- (d) If the dog was attacked or menaced by another domestic animal, or the other domestic animal was on the property of the owner, or custodian, of the dog;
- (e) If the dog was responding to pain or injury, or protecting itself, its kennel, or its offspring;
- (f) If a person or other domestic animal was disturbing the dog's natural functions, such as sleeping or eating;
- (g) Neither growling or barking, nor both, shall alone constitute grounds upon which to find a dog "dangerous."

Exposed to rabies shall mean an animal that has been bitten by or in contact with any animal known to have been exposed to rabies.

Owner shall mean any person or legal entity, excluding governmental bodies and agencies, having a possessory property right in or custody of a dog or other animal, or who harbors, cares for, or exercises control over any animal.

Person shall mean any individual, employee, corporation, company, co-partnership, or association.

Restrained or **Restraint** shall mean an animal that is properly controlled by a leash or otherwise under the reasonable control of the owner or custodian, confined within a vehicle being driven or parked in a place generally open to the public, or confined within the property limits of its owner or keeper.

Section 5.3-Penalty for Violation of Ordinance.

Any person violating the provisions of this chapter shall be responsible for a municipal civil infraction, unless another penalty is specified. The fine for each violation of any provision of this ordinance punishable as a municipal civil infraction shall be \$750.00 for a first offense, \$1,500.00 for a second offense and \$3,000.00 for a third or subsequent offense, unless otherwise specified. In addition to any fine imposed for a violation of this ordinance, the owner shall be responsible for any impound fees and/or fees for the destruction of the dog, as provided in this ordinance. The Court may also issue such injunctive relief as may be necessary to enforce this ordinance.

Section 5.4-Dogs in public; restraint; immunization required.

No dog shall be permitted at any time to be on a public highway or street, or in a public park, public building, or any other public place, or in any place to which the public is generally invited:

- (A) Except when restrained by the owner thereof or another responsible person, or when confined in a shipping receptacle or vehicle, or when on the premises of a duly-authorized dog training facility or dog park; and
- (B) Unless such dog shall have been immunized against rabies.

Nothing in this section shall be interpreted to prevent an owner from taking his dog to the offices of a veterinarian for the purpose of having the dog immunized.

Section 5.5-Running at large.

It shall be unlawful for any owner of an animal to allow or permit the animal to run at large, or to enter onto the private property of another without the express permission of the owner or occupant of the private property.

Section 5.6-Noise.

No person shall harbor or keep any animal, including but not limited to any dog, that by loud, frequent, or habitual barking, yelping, or howling, shall cause an annoyance to the neighborhood, or to people passing to and from upon the street. Any person violating this section shall be responsible for a municipal civil infraction. The fine for a violation of this section shall be \$100.00 for a first offense, \$200.00 for a second offense and \$400.00 for a third or subsequent offense.

Section 5.7-Sanitation.

(A) It shall be unlawful for any owner of an animal to allow or permit such animal to soil, defile, defecate, or commit any nuisance on a public thoroughfare, sidewalk, passageway, bypass, play area, park, or any place where people congregate or walk, or upon any public property whatsoever, or upon any private property without permission of the owner of such property, unless:

- (1) Such owner shall immediately remove all droppings deposited by such animal by any sanitary method, and for such purposes shall

possess a container of sufficient size to collect and remove the above-mentioned droppings and exhibit the container if requested by any official empowered to enforce this Ordinance.

(2) The droppings removed from the aforementioned areas shall be disposed of by the owner of such animal in a sanitary method on the property of the owner of such animal.

(B). Yards shall be kept free of accumulated animal droppings and shall be maintained in a sanitary manner so as not to be a nuisance because of odor or attraction of flies or vermin or be likely to cause contamination to sewers or waterways.

(C) Nothing in this Section is intended to supersede or invalidate any property maintenance provisions set forth in chapter 21.

(D). Any person violating this section shall be responsible for a municipal civil infraction. The fine for a violation of this section shall be \$100.00 for a first offense, \$200.00 for a second offense and \$400.00 for a third or subsequent offense.

Section 5.8-Exposure to Rabies; Notice.

It shall be the duty of any owner of an animal which has been attacked or bitten by another animal showing symptoms of rabies to immediately notify the City's police department or county animal control department or health department of the attack and his or her possession of such animal.

Section 5.9-Female Animal in Heat.

The owner of any female animal in heat shall not permit such animal to be at large in the streets or public places in the City or on any premises other than those of the owner or custodian of such animal. The owner of such animal shall keep such animal confined in a building or a secure enclosure on a leash at all times, so that she will not come in contact with other animals except for intentional breeding purposes and so that she will not create nuisance by attracting other animals.

Section 5.10-Cruelty to Animals.

(A) No person shall willfully or maliciously inflict unnecessary or needless cruelty, torture, abuse, or cruelly beat, strike, or abuse any animal, or by an act, omission, or neglect, cause or inflict any unnecessary or unjustifiable pain, suffering, injury, or death to any animal, whether such animal belongs to such

person or to another, except that reasonable force may be employed to drive away vicious or trespassing animals.

(B) No person owning or possessing any animal shall fail, refuse, or neglect to provide such animal with food, potable water, shade, or shelter, or cruelly or unnecessarily expose such animal in hot, stormy, cold, or inclement weather, or carry such animal in or upon any vehicle in a cruel or inhumane manner

Section 5.11-Animal bites.

Anyone having knowledge or reason to believe that any animal in the City has bitten a person shall report within twenty-four (24) hours, so far as is known, the name and address of the owner and circumstances of the animal. Such report concerning bites shall be made to the police department

Sec. 5-12. Keeping of Animals as Accessory Use

Any animal, other than a household pet, that is permitted to be kept as accessory to a principal use of a property shall be housed in accessory buildings meeting the requirements of the Zoning Ordinance. Notwithstanding any other provision of this Code of Ordinances, including the Zoning Ordinance, such accessory structure shall be permitted, provided that it shall not be located in the front yard of any lot, nor nearer than 100 feet to any adjoining dwelling, nor nearer than 25 feet to the dwelling of the owner thereof. Such accessory structure shall be a covered enclosure, and the animal shall be kept within the covered enclosure or within a fenced area complying with the setback requirements below at all times, and shall not be permitted to run at large in any street, alley, or public place, or upon the premises of another.

All enclosures for the keeping of such animal shall be constructed of material that can be easily cleaned and shall be kept in a clean and sanitary condition. The enclosure shall be properly ventilated to prevent drafts and remove odors, shall be of sufficient size to accommodate the animal, and shall be designed so as to prevent rats, mice, or other rodents from being harbored underneath, inside, or inside the walls of the enclosure. The required fenced area shall be a minimum of 15 feet from the property line (a fence located on a property line shall not satisfy the requirement for a fenced area). The required fenced area must be kept free from trash and accumulated droppings.

Removal or appropriate disposal of droppings is required. Droppings not used for composting or fertilizer shall be removed. All provisions of the Code of Ordinances relating to noise, odor, and sanitation, including the provisions of this Article, shall apply to the keeping of animals under this Section.

All animals, except livestock and household pets, shall be female. No roosters are permitted on any property. No slaughtering of animals may occur except within the fenced area and in an enclosed building.

Sec. 5.13-Parental liability.

The parent or guardian of any minor claiming ownership of any animal subject to this Chapter shall be deemed to be the owner of such animal and shall be charged for all penalties and fees imposed under this chapter.

Section 5.14-Enforcement of Ordinance.

Any Code Compliance Official of the City and any Police Officer may employ all proper means for the enforcement of this Ordinance, and may issue appearance tickets in accordance with this Code.

ARTICLE II-REGULATION OF DANGEROUS ANIMALS

Section 5.15-Dangerous animals prohibited

Except as otherwise permitted in this Article, no person shall own or keep a dangerous animal, including a dangerous or vicious dog, in the City.

Section 5.16-Exceptions.

The prohibition in Section 6.1 shall not apply to the following:

- (A) Animals under the control of a law enforcement or military agency;
- (B) Animals that are kept for the protection of property, provided that such animals are restrained by a leash or chain, cage, fence, or other adequate means, from contact with the public, or with persons who enter the premises with the actual or implied permission of the owner or occupant;
- (C) Animals under display or exhibition to the public, provided that:
 - (1) Such animals are restrained by a leash or chain, cage, fence, or other adequate means, from contact with the public;
 - (2) The display or exhibition is for a period of not exceeding ten (10) days;

- (3) The display or exhibition is conducted in full compliance with the City of Novi Zoning Ordinance.
- (4) Animals kept in a licensed veterinary hospital for treatment; and
- (5) Animals for sale in a commercial establishment

Section 5.17-Prospective dog bites; reporting; destruction; show cause

(A) The owner of any dangerous and vicious dog that bites a person after the effective date of this ordinance shall:

- (1) Report the biting incident to the City of Novi Police Department within twelve (12) hours of the incident; and
- (2) Destroy such dog humanely within forty-eight (48) hours of the biting incident, except if the person bitten is a trespasser on the owner's property or the owner is granted relief from such requirement following a show cause hearing under subsection (b).

(b) Upon a sworn complaint that an owner has failed to destroy a dog within forty-eight (48) hours of a biting incident under subsection (a), a district court or district court magistrate shall issue a summons to the owner ordering him to appear to show cause why the dog should not be destroyed or permanently removed from the City. Failure to report the biting incident as required under subsection (a)(1) shall constitute *prima facie* evidence and a legal presumption that the person bitten was not a trespasser. Upon the filing of a sworn complaint as provided herein, the court or magistrate may order the owner to immediately turn the dog over to the Oakland County animal control officer, an incorporated humane society, a licensed veterinarian, or a boarding kennel, at the owner's option, to be retained by them until a hearing is held and a decision is made for the disposition of the dog. The expense of the boarding and retention of the dog is to be borne by the owner. After a hearing, the magistrate or court shall issue its findings and opinion as to whether the dog is subject to destruction or removal under this section. If so, the court shall order the destruction of the dog at the expense of the owner, or, in the alternative, at the court's discretion, order to have the animal permanently removed from the City under terms and conditions which ensure such removal.

PART II

Savings Clause. That the amendment of the Novi Code of Ordinances set forth in this Ordinance does not affect or impair any act done, offense committed, or right accruing, accrued, or acquired or liability, penalty, forfeiture or punishment, pending or incurred prior to the amendment of the Novi Code of Ordinances set forth in this Ordinance.

PART III

Severability. That should any section, subdivision, clause, or phrase of this Ordinance be declared by the courts to be invalid, the validity of the Ordinance as a whole, or in part, shall not be affected other than the part invalidated.

PART IV

Repealer. All other Ordinances or parts of Ordinances in conflict herewith are hereby repealed only to the extent necessary to give this Ordinance full force and effect.

PART V

Effective Date: Publication. That the provisions of this Ordinance shall become effective fifteen (15) days after its adoption and shall be published within 15 days of its adoption by publication of a brief notice in a newspaper circulated in the City, stating the date of enactment and the effective date of the ordinance, a brief statement as to the subject matter of this Ordinance and such other facts as the Clerk shall deem pertinent, and that a copy of the Ordinance is available for public use and inspection at the office of the City Clerk.

Made, Passed and Adopted by the Novi City Council this ____ day of March, 2011.

David B. Landry, Mayor

Maryanne Cornelius, City Clerk

Certificate of Adoption

I hereby certify that the foregoing is a true and complete copy of the ordinance adopted at the regular meeting of the Novi City Council held on the ___ day of March, 2011.

Maryanne Cornelius, City Clerk

Adopted:
Published:
Effective:

Chapter 5 ANIMALS*

***Cross references:** Animals in parks, § 25-61; persons riding animals subject to traffic regulations, § 33-195; zoning regulation of keeping of dogs and cats, App. A, § 2521.

State law references: Authority to adopt animal control ordinance, MCL 287.290, MSA 12.541; crimes relating to animals and birds, MCL 750.49 et seq., MSA 28.244 et seq.

Sec. 5-1. Definitions.

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

Cat means any feline.

Dangerous animal means any wild mammal, reptile or fowl which is not naturally tame or gentle but is of a wild nature or disposition and which, because of its size, vicious nature or other characteristics could constitute a danger to human life or property. The term "dangerous animal" also means and includes any domestic mammal, reptile or fowl which, because of its size or vicious propensity or other characteristics, could constitute a danger to human life or property.

Dog means any canine.

Lot means a parcel of land occupied or intended to be occupied as a dwelling, together with accessory buildings and yard.

Premises means an area of private property, including grounds, buildings and appurtenances. For purposes of interpretation and enforcement of this chapter, any common areas of condominium property shall not be considered the premises or private property of a person residing in or having an ownership interest in a condominium unit. Common areas include all portions of a condominium project other than the condominium units and those areas appurtenant to condominium units.

Run at large means the presence of a dog at any place except upon the premises of the owner or upon the premises of a person who has given permission. Provided, however, a dog shall not be considered to be running at large if it is on a leash and under the control of a person physically able to control it or in an enclosed vehicle.

(Ord. No. 84-108.02, § 2.01, 4-9-84)

Cross references: Definitions and rules of construction generally, § 1-2.

Sec. 5-2. Injury to property by dogs or cats; waste products.

(a) No person owning or possessing a dog or cat shall permit such dog or cat to go upon any sidewalk, parkway or private lands or premises without the permission of the owner of

such premises and bruise, break, tear up, crush, or injure any lawn, flower bed, plant, shrub, tree, or garden in any manner whatsoever or to defecate thereon.

(b) No person owning or possessing a dog or cat shall cause or permit such dog or cat to be on property, public or private, not owned or possessed by such person unless such person has in his immediate possession an appropriate device for scooping excrement and an appropriate depository for the transmission of excrement to a receptacle located on property owned or possessed by such person. This subsection shall not apply to a person who is visually or physically handicapped.

(Ord. No. 84-108.02, § 3.01, 4-9-84)

Cross references: Offenses against property generally, § 22-66 et seq.

State law references: Malicious mischief, MCL 750.377 et seq.

Sec. 5-3. Dogs running at large.

No person owning or possessing a dog shall cause or permit such dog to run at large within the city.

(Ord. No. 84-108.02, § 4.01, 4-9-84)

Sec. 5-4. Noisy dogs and cats.

No person shall knowingly own or possess any dog which habitually barks, howls or yelps, or any cat which habitually cries or howls, in such a manner as to disturb the reasonable peace and quiet of the neighborhood. Such dogs and cats are hereby declared to be a public nuisance.

(Ord. No. 84-108.02, § 5.01, 4-9-84)

Sec. 5-5. Dangerous animals.

(a) No person shall own or possess a dangerous animal within the city.

(b) Subsection (a) of this section shall not apply to:

(1) Animals under the control of a law enforcement or military agency;

(2) Animals which are kept for the protection of property, provided that such animals are restrained by a leash or chain, cage, fence or other adequate means, from contact with the public, or with persons who enter the premises with the actual or implied permission of the owner or occupant;

(3) Animals under display or exhibition to the public, provided that:

a. Such animals are restrained by a leash or chain, cage, fence or other adequate means, from contact with the public;

b. The display or exhibition is for a period of not exceeding ten (10) days; and

c. The display or exhibition is conducted in full compliance with the City of Novi Zoning Ordinance.

(c) Any dangerous animal which is found off the premises of his owner may be seized by any police officer and immediately turned over to the county department of animal control.

(Ord. No. 84-108.02, § 6.01, 4-9-84; Ord. No. 95-108.03, Pt. I, 5-15-95)

Sec. 5-6. Cruelty to animals.

(a) No person shall willfully or maliciously inflict unnecessary or needless cruelty, torture, abuse, or cruelly beat, strike or abuse any animal, or by an act, omission or neglect, cause or inflict any unnecessary or unjustifiable pain, suffering, injury or death to any animal whether such animal belongs to such person or to another, except that reasonable force may be employed to drive away vicious or trespassing animals. Any unwanted animal should be delivered to the Oakland County Humane Society for proper disposal.

(b) No person owning or possessing any animal shall fail, refuse or neglect to provide such animal with food, potable water, shade, or shelter, or cruelly or unnecessarily expose such animal in hot, stormy, cold, or inclement weather, or carry such animal in or upon any vehicle in a cruel or inhumane manner.

(Ord. No. 84-108.02, § 7.01, 4-9-84)

State law references: Cruelty, MCL 752.21 et seq.

Sec. 5-7. Animal bites.

Anyone having knowledge or reason to believe that any animal in the city has bitten a person shall report within twenty-four (24) hours, so far as is known, the name and address of the owner and circumstances of the animal. Such report concerning bites shall be made to the police department.

(Ord. No. 84-108.02, § 9.01, 4-9-84)

State law references: Dogs attacking or biting persons, MCL 287.286a, 287.288, 287.351; rules for control of rabies and the disposition of nonhuman agents carrying disease, including rabid animals, MCL 333.5111.

Sec. 5-8. Parental liability.

The parent or guardian of any minor claiming ownership of any dog, cat or other animal subject to this chapter, shall be deemed to be the owner of such animal and shall be charged for all penalties and fees imposed under this chapter.

(Ord. No. 84-108.02, § 10.01, 4-9-84)

Sec. 5-9. Reserved.

Editor's note: Ord. No. 03-108.4, Pt. I, adopted March 3, 2003, repealed § 5-9, which pertained to limit on number of dogs and derived from Ord. No. 84-108.02, § 8.01, adopted April 9, 1984.