

ORDINANCE NO. 23, 2013

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF WISE,
VIRGINIA, ENACTING THE TOWN OF WISE COMPREHENSIVE ANIMAL
CONTROL ORDINANCE OF 2013; REPEALING PREVIOUS ORDINANCES;
PENALTIES, ETC.

WHEREAS, the Town of Wise wishes to implement an animal control program.

NOW, THEREFORE, BE IT ORDAINED by the Town Council of the Town of Wise,
Virginia, as follows:

- Section 1. – Definitions
- Section 2. – Office of Animal Warden
- Section 3. – Animal Licenses
- Section 4. – Enforcement
- Section 5. – Confinement of Animals
- Section 6. – Commercial Dog Breeders
- Section 7. – Nuisance
- Section 8. – Cited

SECTION 1. DEFINITIONS

The following words and terms shall have meanings ascribed to them in
this section.

Abandon – to desert, forsake or absolutely give up an animal without
having secured another owner or custodian for the animal or by failing to provide
the elements of basic care.

Animal – any nonhuman vertebrate species susceptible to rabies.

Animal shelter – a facility which is used to house or contain animals and
which is owned, operated or maintained by an animal welfare society or other
nonprofit organization devoted to the welfare, protection and human treatment of
animals.

Animal Warden – any person employed or appointed by the Town Council
for the purposes of aiding in the enforcement of this law or any other law or
ordinance relating to the licensing of dogs or cats, control of dogs and cats, cruelty
to animals or seizure and impoundment of companion animals.

Collar – means a well fitted device appropriate to the age and size of the
animal, attached to the animal's neck in such a way to prevent trauma or injury to
the animal.

Companion animal – a domestic or feral dog, domestic or feral cat, non-human primate, guinea pig, hamster or rabbit not raised for human food or fiber.

Enclosure – a structure used to house or restrict animals from running at large.

Euthanasia – the human destruction of an animal accomplished by a method which causes painless loss of consciousness and death during such loss of consciousness.

Feral animal – a wild animal having escaped from domestication.

Kennel – any enclosure or establishment in which five or more canines, felines or hybrids of either are kept for the purpose of breeding, hunting, training, renting, buying, boarding, selling or showing.

License – the Town will not sell dog/cat animal licenses but each animal in the Town shall bear a metal tag stamped for identification and evidence of vaccination.

Owner – Any person who has right of property in an animal, keeps or harbors an animal, has an animal in his care, or acts as a custodian of an animal.

Pound – a facility operated by a political subdivision for the purpose of impounding or harboring seized, stray, homeless, abandoned or unwanted animals.

Treasurer – includes the Treasurer of the Town and his/her assistants which are designated by law to collect taxes.

Veterinary treatment – treatment by or on the order of a duly licensed veterinarian.

SECTION 2. OFFICE OF THE ANIMAL WARDEN

2.1 **Animal Warden** – The Animal Warden, for this Ordinance, shall be the Wise County Animal Control Officer.

2.2 **Operating Procedure** – The Animal Warden shall operate under procedures established by Wise County and shall contain at a minimum:

- a. Training requirements for the animal warden.
- b. Procedures for confinement of animals that are in violation of the animal licensing law.
- c. Procedures for confinement of animals that are rabid, suspected of being rabid, in poor health, injured, orphaned, vicious, dangerous or presenting a public nuisance.
- d. Procedures for answering complaints from the public concerning

- any violations of this ordinance.
- e. Procedures for dealing with injured, diseased, or dead animals.
 - f. Procedures for transporting animals to the pound or enclosure or to a local veterinarian for animals in need of immediate attention.

SECTION 3. ANIMAL LICENSES

The Town shall not require a town license. A current county license tag with owner identification and current rabies vaccination tag is required on the collar of the dog or cat.

SECTION 4. ENFORCEMENT

4.1 Dangerous or vicious animals - Any animal which has bitten, attacked or inflicted injury on a person or companion animal, or killed a companion animal shall be considered dangerous. A vicious animal is any species which has killed a person, inflicted serious injury to a person, including multiple bites, serious disfigurement, serious impairment of a bodily function or continues to exhibit behavior which resulted in a previous finding by a court that it is a dangerous animal, provided that its current owner has been given written notice of such finding.

4.2 Summons required - When any warden has reason to believe that an animal within his jurisdiction is dangerous or vicious he shall apply to a magistrate of the jurisdiction for the issuance of a summons requiring the owner or custodian, if known, to appear before a general district court at a specified time. The summons shall advise the owner of the nature of the proceedings and the matters at issue. The animal warden shall confine the animal until such time as evidence shall be heard and a verdict rendered. The court, through its contempt powers, may compel the owner, custodian or harbinger of the animal to produce the animal. If, after hearing the evidence, the court finds that the animal is dangerous, the court shall order the animal's owner to comply with the provisions of this ordinance. If, after hearing the evidence, the court finds that the animal is vicious, the court shall order the animal euthanized in accordance with State statutes.

4.3 Exemptions to Summons requirements - No animal shall be found to be dangerous or vicious solely because it is of a particular breed. No animal shall be found to be dangerous or vicious if it is performing its duties as a Police dog or was responding to pain or injury or was protecting itself, its offspring, or its owner or owner's property or if the threat, injury or damage was sustained by a person who was, at the time;

- a. committing a crime upon the premises occupied by the animal's owner or custodian or
- b. committing a willful trespass or other tort upon the premises occupied by the animal's owner or custodian or
- c. provoking, tormenting or physically abusing the animal.

4.4 Dangerous Animal Registration – The owner of an animal found by a court to be dangerous shall, within ten days of such finding, obtain a dangerous animal registration certificate from the animal warden for a fee of fifty dollars in addition to other license fees that may be authorized by law. The animal warden shall provide the owner with a uniformly designed tag and collar which clearly identifies the animal as a dangerous animal. The owner shall affix the tag to the animal's collar and ensure that the animal wears the collar and tag at all times and shall confine the animal in a proper enclosure or keep the animal inside the owner's residence or muzzle and confine the animal in the owner's fenced-in yard. In addition, the owner shall post the property with a clearly visible sign warning both adults and minors of the presence of a dangerous animal. All certificates issued pursuant to this section shall be renewed annually for the same fee and in the same manner as the initial certificate and license was obtained.

4.5 Animal in Season – It shall be unlawful for the owner or custodian, of a female animal in season, to permit such animal to roam at large or to be taken on a leash upon the streets, sidewalks, or public places in the Town. If such animal is determined by the Animal Warden to be an annoyance to the neighborhood, the procedure outlined in Section 4.13 herein shall be implemented. The initial penalty for violating this section shall not exceed \$25.00.

4.6 Dead Animals – The owner of any companion animal which has died from disease or any other cause shall forthwith cremate, bury or sanitarily dispose of the same. If, after notice, any owner fails to do so, the animal warden or other officer shall bury or cremate the companion animal and the Town may recover from the owner its costs for this service and may levy an additional penalty not to exceed \$25.00.

4.7 Cruelty to Animals – No person may torture, ill-treat, abandon or willfully inflict inhumane injury or pain or cruelly or unnecessarily beat, maim, mutilate or kill any animal in the Town, whether belonging to himself or another. The penalty for violating this section shall not exceed \$150.00.

4.8 Unlicensed Animals – Any dog or cat not wearing a collar bearing a county license tag of the proper calendar year and current rabies vaccination tag shall prima-facie be deemed to be unlicensed and in any proceedings under this ordinance or otherwise, the burden of proof of the fact that such dog or cat has been licensed or is otherwise not required to wear a tag at the time, shall be on the owner of the dog or cat. The penalty for violating this section shall not exceed \$15.00.

4.9 Animals Creating a Disturbance or Constituting a Public Nuisance – No owner or custodian shall allow an animal to bark, howl or squall in such a manner as to disturb the public rest. No owner or custodian shall permit an animal to create a disturbance by running after people, vehicles, bicycles, etc. in the public streets in a vicious manner or by other conduct which unreasonably disturbs the peace or the quiet. Upon receiving numerous and substantial complaints of such conduct,

the Animal Warden shall implement the procedures outlined in Section 4.13 herein. The initial penalty for violating any part of this section shall not exceed \$25.00.

4.10 Destruction of Property – No owner or custodian shall permit an animal to go upon the property of another person and damage, disturb or destroy any garden, shrub, grass, garbage or other property of the landowner. Upon receipt of a complaint of such violation, the Animal Warden shall implement the procedures outlined in Section 4.13 herein. The initial penalty for violating this section shall not exceed \$25.00.

4.11 The Town Shall Prohibit Dogs From Running at Large – Dogs are hereby prohibited from running at large in the corporate limits of the Town of Wise, during all months of the year. A dog shall be deemed to run at large while roaming, running or self-hunting off the property of its owner or custodian and not under its owner's or custodian's immediate control. Property for which the owner or custodian has obtained permission for the dog shall be deemed the property of its owner or custodian.

Any person who permits a dog, duly licensed and wearing a license tag required by the Ordinance, to run at large shall be deemed to have violated the provisions of this section and the Animal Warden shall implement the procedures outlined in Section 4.13 of the Ordinance. The initial penalty for violation of this section shall not exceed \$15.00.

Any person who permits a dog, not duly licensed or not wearing a license tag as required by the Ordinance, to run at large shall be deemed to have violated the provisions of this section and the Animal Warden shall implement the procedures of Sections 5.1 through 5.4, inclusive, of the Ordinance. The initial penalty for a violation of this section shall not exceed \$15.00. If the dog is confined and later claimed under Section 5.2 of the Ordinance, the owner or custodian shall also pay the amounts required by that section.

Any dog not wearing a collar bearing a county license tag of the proper calendar year and a current rabies vaccination tag shall prima facie be deemed to be unlicensed and in any proceedings under this Ordinance, the burden of proof of the fact that such dog has been licensed or is otherwise not required to bear a tag at the time, shall be on the owner of the dog.

4.12 Number of Animals – Except as permitted for kennels in the zoning ordinance and subdivision regulations of the Town of Wise, it shall be unlawful for any household to keep over five (5) animals over twelve (12) months of age on the premises. The head of the household shall be responsible for any violation. The penalty for violation of this section shall not exceed \$15.00.

4.13 Enforcement Procedure – The Animal Warden shall comply with the following procedures in respect to the enforcement of Sections 4.5, 4.9, 4.10 and 4.11 of

this Ordinance.

- a. The animal owner or custodian will be notified of the nature of the complaint or violation. The officer may, in his discretion, issue a written notice or summons of violation as described in the applicable section of this Ordinance. The animal owner or custodian will be advised of the consequences of further violations of this Ordinance.
- b. Further violations of the same nature will result in a fine as prescribed in this Ordinance and each successive fine will double in amount up to the maximum allowable in Section 4.14.

4.14 Civil Penalty for Violation – The Town of Wise hereby establishes a uniform schedule of civil penalties for violations of specific provisions of this Ordinance and the penalty for any one violation shall not exceed \$150.00. Designation of a particular violation for a civil penalty shall be in lieu of criminal sanctions and preclude prosecution of such violation as a criminal misdemeanor. Imposition of a civil penalty shall not preclude an action for injunctive, declaratory or other equitable relief.

SECTION 5. CONFINEMENT OF ANIMALS

5.1 Impoundment Facility - The Animal Warden shall cause to be maintained a pound or enclosure in accordance with guidelines issued by the State Department of Agriculture and Consumer Services. The place of confinement, impoundment, shelter and disposition for any animals held under this Ordinance shall be the Wise County Animal Shelter. The Animal Warden shall require that the pound be accessible to the public at reasonable hours during the week. It shall be the duty of the Animal Warden to confine any animal running at large without the license tag required in Section 3 of this Ordinance or confine any animal where in the opinion of the Animal Warden there is a violation of the provisions of Section 4 of this Ordinance that would require that the animal be confined therein. The Animal Warden shall require that any animal which has been so confined must be kept for a period of not less than five days. Such five day period shall commence on the day immediately following the day the animal is initially confined in the facility unless sooner claimed by the animal's rightful owner who has paid the required fee and/or penalty.

5.2 Claiming of Animals – Either an owner, custodian or an individual who has found an animal may make claim to an animal by expressing his desire in writing to claim the animal prior to or at the expiration of the waiting period and after payment of the required license fee, if any, and the actual expenses incurred in keeping the animal impounded.

5.3 Adoption of Animals – At the expiration of the required holding period, if an animal has not been claimed by its owner or custodian, the animal may be delivered to any resident of the Town or of an adjacent political subdivision who

proposes to adopt it as a pet and who will pay the required license fee, if any, and the actual expenses incurred in keeping the animal impounded. However, no more than two animals or a single family of animals shall be delivered during any thirty-day period to any one such person.

5.4 Disposition of Animals – If an animal has not been claimed or adopted at the end of the holding period, it may be humanely destroyed. Prior to euthanizing the animal, the Animal Warden shall make a reasonable effort to ascertain if the animal has a collar, tag, license or other identification and shall make a reasonable effort to contact the animal's owner or custodian. Any feral dog or feral cat not bearing a collar, tag or other form of identification which, based on the written certification of a disinterested person, exhibits behavior that poses a risk of physical injury to any person confining the animal, may be euthanized after being kept for a period of not less than three days, at least one of which shall be a full business day, such period to commence on the day the animal is initially confined in the facility. For purposes of this section a disinterested person shall not include a person releasing or reporting the animal to the facility. No provision herein shall prohibit the immediate destruction of a vicious, critically injured or critically ill animal for humane purposes. Any animal destroyed pursuant to the provisions of this chapter shall be euthanized by one of the methods prescribed or approved by the State. Nothing in this section shall prohibit the immediate destruction, delivery to any humane society or shelter, or adoption of an animal that has been delivered voluntarily or released to a pound by the animal's rightful owner after the rightful owner has, in writing, surrendered all property rights in such animal.

SECTION 6. COMMERCIAL DOG BREEDERS

All commercial dog breeders within the Town shall operate in accordance with the provisions as set forth in the Code of Virginia § 3.1-796.66 to 3.1-796.129 and § 58.1-3109, which said sections are hereby incorporated herein by reference into this Ordinance as if set forth in full.

SECTION 7. NUISANCE

Notwithstanding anything contained in this Ordinance to the contrary, it shall be unlawful for any person to maintain an enclosure, pen or restraint for animals or dogs which creates a nuisance in the form of odor, flies, defecation or any health hazard. Any person violating the provisions of this section shall, upon conviction, be guilty of a Class III misdemeanor.

SECTION 8. CITED

This Ordinance may be cited as the Town of Wise Comprehensive Animal Control Ordinance of 2013.

SECTION 9. INTENT

The legislative intent of this ordinance is to consolidate applicable provisions of previous animal ordinances into one comprehensive document.

SECTION 10. REPEAL OF CONFLICTING ORDINANCES

All previous ordinances, or portions thereof, in conflict herewith are hereby repealed.

SECTION 11. STATE LAW REFERENCE

Authority for this ordinance is provided in Virginia Code §3.2-6500 et seq.

VOTING "AYE" Erra Sutherland, Caynor Smith Jr, Teresa Adkins, Billy Bartlett Jr,
Jeff Dotson

VOTING "NAY" - None -

ADOPTED, ORDAINED, ENACTED AND EFFECTIVE this 26th day of November, 2013.

TOWN OF WISE, VIRGINIA

Erra Sutherland
MAYOR

ATTEST:

Rebecca M. Bryant
CLERK OF COUNCIL