

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF CYPRESS, CALIFORNIA,
ADDING A NEW SECTION 3-5, TO CHAPTER 3 OF THE
CYPRESS MUNICIPAL CODE ("ANIMALS AND FOWL"), RELATING TO THE
ADOPTION OF A DOG BREED SPECIFIC MANDATORY SPAY AND NEUTER
PROGRAM FOR THE SPAYING AND NEUTERING OF PIT BULLS
IN THE CITY OF CYPRESS

WHEREAS, the California Constitution permits a City to make and enforce within its limits all local, police, sanitary and other ordinances and regulations not in conflict with general laws, which is commonly referred to as a City's "police power"; and

WHEREAS, pursuant to its inherent police powers, the City Council of the City of Cypress (the "City") has adopted those certain regulations regarding animal control that are set forth in Chapter 3 of the Cypress Municipal Code ("Animals and Fowl"), as amended and periodically amended; and

WHEREAS, California Health and Safety Code § 12331(a) provides that cities and counties may enact breed-specific ordinances pertaining to mandatory spay or neuter programs and breeding requirements, provided that no specific dog breed, or mixed dog breed, shall be declared potentially dangerous or vicious under such ordinances; and

WHEREAS, to protect the public health, safety and welfare, it is the desire of the City Council of the City of Cypress to adopt a dog breed specific mandatory spay and neuter program; and

WHEREAS, this Ordinance is exempt from environmental review pursuant to Section 15061(b)(3) of the State Guidelines implementing the California Environmental Quality Act of 1970, as amended.

NOW, THEREFORE, the CITY COUNCIL of the CITY of CYPRESS, CALIFORNIA, does hereby ordain as follows:

SECTION 1. There is hereby added to the Cypress Municipal Code a new Section 3-5 ("Mandatory Spay Neuter Program"), contained within Chapter 3, to read, in its entirety, as follows:

"Section 3-5. Mandatory Spay Neuter Program.

Subsections:

- (1) Findings.**
- (2) Purpose and Intent.**
- (3) Definitions.**
- (4) Determination of Breed.**
- (5) Mandatory Spaying and Neutering of Pit Bulls; Exceptions.**
- (6) Penalties.**
- (7) Allocation of Fees and Fines Collected.**
- (8) Requiring Permit for the Breeding and Transferring of Pit Bull Puppies.**
- (9) Granting or Denying a Permit.**
- (10) Revocation of a Permit.**
- (11) Transference and Sale of Pit Bull Puppies.**
- (12) Fines for Failure to Comply with Permit Requirements.**
- (13) Allocation of Fees and Fines Collected.**
- (14) Exceptions to Permit Posting Requirements.**
- (15) Operative Date.**

- (1) Findings.**

The City Council adopts this Ordinance based upon the following findings:

A. The legislature of the State of California approved of breed specific mandatory spaying and neutering by adopting Senate Bill 861 (SB 861), codified at California Food & Agricultural Code § 31683 and California Health & Safety Code § 122331.

B. The intent of SB 861 was to enable local governments to pass ordinances restricting the breeding of specific dogs by mandating the spaying and neutering of specific dog breeds.

C. It is the City Council's intention that nothing in this Ordinance shall be deemed to conflict with state law as contained in the California Food & Agricultural Code and California Health & Safety Code.

D. It is the City Council's intention that nothing in this Ordinance shall be construed to prevent dog owners in compliance with this Section from maintaining intact breeds.

E. Pit bull breeds and pit bull mixes constitute a majority of the unadopted dogs held in animal shelters.

F. To protect the public health, safety and welfare, it is the desire of the City Council to modify the Cypress Municipal Code consistent with SB 861, regarding the mandatory spaying and neutering of pit bull breeds and the permissive maintenance of and breeding of intact pit bull breeds.

G. Restricting the maintenance of and breeding of intact pit bulls and requiring the spaying and neutering of pit bull breeds will not prevent responsible pet owners from owning, breeding, or showing pit bull breeds.

(2) Purpose and Intent.

A. It is the purpose and intent of this Section to require the mandatory spaying and neutering of all pit bull breeds whose owners have not obtained a permit to maintain an intact breed.

B. It is the purpose and intent of this Section to establish a permit system allowing responsible owners to maintain an intact pit bull breed and to breed pit bulls.

(3) Definitions.

A. Whenever the words "pit bull" are used in this Section, they shall mean any dog that is a bull terrier, miniature bull terrier, American pit bull terrier, Staffordshire bull terrier, American Staffordshire terrier, or any other dog displaying the physical traits of any one or more of the above breeds, or any dog exhibiting those distinguishing characteristics that conform to the standards established by the American Kennel Club ("AKC") or United Kennel Club ("UKC") for any of the above breeds. The AKC and UKC standards for the above breeds are listed on their websites.

B. Whenever the word "City" is used in this Section, it shall mean the City of Cypress.

C. Whenever the word "department" is used in this Section, it shall mean Orange County Animal Control Department.

D. Whenever the words "City Code" are used in this Section, they shall mean the Cypress Municipal Code.

(4) Determination of Breed.

A. If an owner, guardian or keeper is unsure as to whether or not his or her unspayed and unneutered dog is a pit bull, he or she may make an appointment with the department at which time a department staff member shall make a determination as to whether or not the dog is a pit bull.

B. If the dog owner, guardian or keeper wishes to appeal the determination that the dog is a pit bull, within five (5) business days of the staff member's determination, he or she may request a hearing before the department's director or designee. The hearing shall be held no more than

thirty (30) days after the director receives the request. The hearing may be informal and rules of evidence not strictly observed. The decision of the director or designee is final.

(5) Mandatory Spaying and Neutering of Pit Bulls; Exceptions.

No person may own, keep, or harbor any dog within the City that the person in possession knew, or should have known, was a pit bull that has not been spayed or neutered unless:

- A. The pit bull is under sixteen (16) weeks of age.
- B. The pit bull cannot be spayed or neutered without a high likelihood of suffering serious bodily harm or death due to a physical abnormality. A veterinarian must certify such a condition and determine the time frame after which the pit bull can be spayed/neutered. Within thirty (30) days of the operative date of the ordinance codified in this Section, or within thirty (30) days of taking possession or ownership of an unspayed or unneutered pit bull, the owner, guardian or keeper must submit such documentation to be verified by the department.
- C. The pit bull has been present in the City for less than thirty (30) days.
- D. The owner, guardian or keeper has obtained, or has submitted an application for, a breeding permit in accordance with Section 3-5(9).
- E. Determination of breed is under appeal pursuant to Section 3-5(4)(B).
- F. The pit bull is a show dog. Within thirty (30) days of the operative date of the Ordinance codified in this Chapter, or within thirty (30) days of taking possession or ownership of an unspayed or unneutered pit bull, the owner, guardian or keeper must submit a copy of the organization papers (AKC or UKC) to the department, demonstrating the pedigree information and show dog registration and that the dog conforms with the same breeding permit guidelines set forth in Section 3-5(9).

(6) Penalties.

Violation of Section 3-5(5) may result in the following penalties:

A. A first violation may result in the department impounding the pit bull and disposing of the pit bull in accordance with Title 4, Division 1, Article 7 of the Codified Ordinances of the County of Orange, as adopted by the City and incorporated into the City Code pursuant to Section 3-1 of this Chapter. A first violation shall be an infraction punishable by a fine not to exceed five hundred dollars (\$500.00). In order for the owner, guardian or keeper to reclaim a pit bull from the department, in addition to paying the other charges and fees set out in this Section, one of the following must occur:

- (1) The department shall have a veterinarian spay or neuter the dog. The dog owner, guardian or keeper shall pay a deposit of one hundred dollars (\$100.00) prior to the procedure and will be charged the fee for such services consisting of the actual expense incurred as established by the department. There may be additional fees for any extraordinary care provided.
- (2) In the alternative, the owner, guardian or keeper shall arrange for another veterinarian within the City or Orange County to spay or neuter the dog and shall pay the department a fee of sixty dollars (\$60.00), which shall cover the department's costs of delivering the dog to a vet of the owner's, guardian's or keeper's choosing. The department shall deliver the dog to the

vet, and the vet shall release the dog to the owner, guardian or keeper only after the spaying or neutering is complete.

- (3) At the discretion of the director, or designee, the director may release the dog to the owner, guardian or keeper; provided that the owner, guardian or keeper signs an affidavit that he or she will have the dog spayed or neutered within two (2) weeks and will provide documentation verifying that the spaying or neutering occurred upon completion. If the owner, guardian or keeper fails to have his or her pit bull spayed or neutered as agreed in the affidavit, the department shall have the authority to impound the dog, and the owner, guardian or keeper may be charged with a second violation under subsection (B) of this Section 3-5(6), below.

B. A second violation of this Section by the owner, guardian or keeper shall be a misdemeanor punishable by imprisonment in the county jail for a period not to exceed six (6) months or by a fine not to exceed one thousand dollars (\$1,000), or by both such fine and imprisonment. In addition, a second violation may result in the department impounding the pit bull and disposing of the pit bull in accordance with Title 4, Division 1, Article 7 of the Codified Ordinances of the County of Orange, as adopted by the City and incorporated into the City Code pursuant to Section 3-1 of this Chapter. Further, the provisions of Section 3-5(6)(1)-(3) above may apply.

C. In addition to any other penalties or fines provided for in this Chapter, any reasonable costs incurred by the city in seizing, impounding and for confining any animal pursuant to this Section shall be a charge against the owner.

(7) Allocation of Fees and Fines Collected.

All fees and the City's share of all fines collected under Section 3-5(6) shall be used only by the department to fund the implementation and enforcement of the City's pit bull spaying and neutering program.

(8) Requiring Permit for the Breeding and Transferring of Pit Bull Puppies.

A. No person shall cause or allow any pit bull, as defined in Section 3-5(3)(A), which is owned, harbored or kept within the City to breed or give birth without first obtaining a permit as described in this Section.

B. Keeping an unaltered male adult dog together with a female dog in heat in the same dog run, pen, room, or any other space where the two (2) dogs are allowed contact with one another that would allow the dogs to breed is considered prima facie evidence of an owner, guardian or keeper's intent to allow the dogs to breed.

(9) Granting or Denying a Permit.

A. An owner or keeper of a pit bull may obtain a nontransferable permit that lasts for one (1) year. If more than one (1) owner, guardian, or keeper is involved in the breeding process, each party must apply for and be granted a breeding permit. The permit may be obtained from the department if all of the following conditions are met:

- (1) The applicant has submitted the appropriate forms and fees required by the department in order to seek consideration for a breeding permit.
- (2) The applicant has a space in which to breed pit bulls and raise the puppies that the department is satisfied will contain the animals as well as provide them with safe, sanitary, and humane conditions, appropriate for breeding pit bulls, which

satisfies all applicable provisions of this Section and all applicable state animal welfare laws.

- (3) The department has evaluated and reached a positive conclusion regarding the suitability of the particular pit bulls to be bred, including consideration of their lineage, age and health condition. The department shall utilize the following guidelines in making a determination:
 - (a) Owners, guardians or keepers shall provide verification that any pit bull to be bred is registered as a bull terrier, miniature bull terrier, American pit bull terrier, Staffordshire bull terrier, or American Staffordshire terrier with the appropriate registry for its breed (American Kennel Club, United Kennel Club, American Dog Breeders Association ("ADBA") or any other valid registry as determined by the department).
 - (b) Any pit bull to be bred must meet the pit bull breed standard, as defined by the appropriate registration agency (AK, UKC, or ADBA), for physical conformation as well as temperament.
 - (c) The registered pit bull has participated in at least one (1) approved dog show during the previous three hundred sixty-five (365) day period or the owner, guardian or keeper has given written notice to one (1) of the dog registries listed above stating his or her intention that the dog will participate in an approved dog show. A dog show is defined as an event that is sanctioned in writing by one or more of the dog registries listed above.
 - (d) Any pit bull to be bred shall have the appropriate health screenings for its breed. For pit bulls this is, at a minimum, the following health tests: Orthopedic Foundation for Animals ("OFA") or University of Pennsylvania Hip Improvement Program ("PennHIP") certification on hips, OFA on heart by a certified cardiologist, and must have passed the American Temperament Testing Society temperament test.
- (4) Breeders shall not allow female pit bulls to have more than one (1) litter per year.
- (5) Upon approval of his or her application, the applicant must pay the one-hundred-dollar (\$100.00) permit fee.

B. The department shall automatically deny the permit if one or more of the following occurs, and that decision shall be final:

- (1) The applicant fails to pay the permit fee within two (2) weeks of notification that the application has been approved. Applicant may reapply for a permit after ten (10) months.
- (2) The applicant has a history of allowing dogs to run loose or escape, or has otherwise been found to be neglectful, or has had his or her dog identified as a nuisance.
- (3) The applicant has violated any provision of this Section.
- (4) The applicant has applied for a permit within the last ten (10) months.

C. The department may on one or more occasion, up to one year after issuing the permit, perform an inspection of the dog's living quarters to ensure that the standards required to receive a permit are met. The department will give the owner, guardian or keeper a twenty-four (24) hour notice and will conduct such inspection at a reasonable time when the owner, guardian or keeper, or his or her representative, is present. The owner, guardian or keeper shall allow the department access to conduct the inspection. If the property does not meet the required standards, or the owner, guardian or keeper cannot be contacted for an inspection within two (2) weeks of the department's initial attempt, or the owner, guardian or keeper fails or refuses to allow an inspection, the department shall not issue a permit.

(10) Revocation of a Permit.

A. The department may, after conducting a hearing, revoke a breeding permit for violations of the provisions of this Section. Within five (5) days of the department's knowledge of any such violations, a hearing officer, who is any designated representative of department or the City police department, shall notice the owner, guardian or keeper of the pit bull in writing that he or she is in violation and subject to penalties under this Section, including revocation of his or her breeding permit. Unless the hearing is waived by the owner, guardian, or keeper of the dog, or the hearing is scheduled on an agreed-upon date, the hearing officer shall fix a time not less than ten (10) or more than thirty (30) days from the date of the violation notice. The hearing officer shall fix a place for said hearing and cause all parties to be notified not less than five (5) days before the date of such hearing. The hearing may be informal and the rules of evidence not strictly observed. Within fifteen (15) days following the hearing, the hearing officer shall issue his or her decision to all parties. The decision of the hearing officer is final. Upon a finding of a violation, the hearing officer may impose appropriate remedies on the owner, guardian, or keeper. Any violation(s) may also be considered in future permitting decisions.

B. After the department has issued a permit, it may revoke the permit pursuant to procedures set forth in subsection (A) of this section if a subsequent inspection of the premises under Section 3-5(9)(C) reveals the area to be below the standards required for the permit, or if the owner, guardian or keeper cannot be contacted for an inspection within two (2) weeks of the department's initial attempt, or if the owner, guardian or keeper refuses the department access for an inspection. If the dog is already pregnant or the puppies are born, the department may, pending a hearing, impound the pit bull and/or its puppies in accordance with Title 4, Division 1, Article 7 of the Codified Ordinances of the County of Orange, as adopted by the City and incorporated into the City Code pursuant to Section 3-1 of this Chapter. After a hearing, the department may fine the owner, guardian or keeper an amount not to exceed five hundred dollars (\$500.00), permanently confiscate the puppies and dispose of them in accordance with Title 4, Division 1, Article 7 of the Codified Ordinances of the County of Orange, as adopted by the City and incorporated into the City Code pursuant to Section 3-1 of this Chapter, and consider the violation in future permitting decisions.

(11) Transference and Sale of Pit Bull Puppies.

A. Any owner, guardian or keeper residing in or conducting a transaction within the City who offers any pit bull puppies under six (6) months old for sale, trade, or adoption, must prominently post his or her valid breeding permit number with any offer of sale, trade, or adoption. The permit number must also be supplied in writing to the individual, firm, corporation, or other entity that acquires a puppy.

B. The breeder shall not remove puppies from the litter until the puppies are at least eight (8) weeks of age, are fully weaned, have their first set of vaccinations, have been dewormed and are in good general health.

C. Breeders and any party that acquires a pit bull puppy through purchase, trade or adoption shall enter into a written agreement for the transaction and must include language that the acquiring party shall, at any time during the dog's life, return the puppy to the breeder if the acquiring party cannot keep it, and that the breeder shall accept any such returned dog.

D. Pit bull puppies that do not have show dog papers as defined in Section 3-5(3)(A) must be spayed or neutered by the breeder prior to transfer.

E. Within three (3) weeks of the time that the litter is whelped, the breeder shall send to the department a head count of how many puppies were live-born. Within three (3) weeks after the breeder transfers physical possession of each puppy, the breeder shall notify the department of the name, address, and telephone number of the new owner, guardian or keeper of each puppy.

(12) Fines for Failure to Comply with Permit Requirements.

A. A violation of the breeding permit provisions of this Section shall be an infraction punishable by a fine not to exceed five hundred dollars (\$500.00). Such violations must be corrected within thirty (30) days.

B. After thirty (30) days of a first citation, if the owner, guardian or keeper fails to correct a violation of this Section, it shall be an additional violation and shall be punishable as a misdemeanor. Subsequent violations will be considered part of a continuous sequence of offenses and each violation after thirty (30) days of a prior conviction will be punishable as a misdemeanor. The punishment shall be imprisonment in the county jail for a period not to exceed six (6) months or by a fine not exceeding one thousand dollars (\$1,000), or by both such fine and imprisonment.

C. Failure to include a prominently posted permit number when transferring pit bull puppies under Section 3-5(11)(A) shall be an infraction punishable by a one-hundred-dollar (\$100.00) fine for the first violation, a two-hundred-dollar (\$200.00) fine upon a second violation within a year of the first offense, and a five-hundred-dollar (\$500.00) fine upon the third and subsequent violations within a year of the second offense.

D. Failure to provide the department with the number of puppies born and information about a new owner, guardian or keeper of each puppy in accordance with Section 3-5(11)(E) shall be an infraction punishable by a one-hundred-dollar (\$100.00) fine for the first violation, a two-hundred-dollar (\$200.00) fine upon a second violation within one year of the first offense, and fine of five hundred dollars (\$500.00) for the third and subsequent violations within one year of the second offense. Failure to provide the department with the new owner's, guardian's or keeper's information for each puppy will be considered a separate and individual violation.

(13) Allocation of Fees and Fines Collected.

All fees and the City's share of all fines collected under Section 3-5(12) shall be used only by the department to fund the implementation and enforcement of the City's pit bull spaying and neutering program.

(14) Exceptions to Permit Posting Requirements.

The department or a valid 501(c)(3) animal welfare and rescue organization that seeks adoptive homes for pit bulls may transfer ownership and place ads without displaying or supplying a permit number as described in Section 3-5(11)(A).

(15) Effective Date.

Notwithstanding the provisions of Section 3-5(5), the provisions of this Section mandating the spaying and neutering of pit bulls shall not be operative until the effective date of the ordinance codified in this Section. Notwithstanding the provisions of Sections 3-5(8) through 3-5(11), the provisions of this Section requiring a permit for the breeding and transfer of pit bull puppies shall not be operative until the effective date of the ordinance codified in this Section."

SECTION 3. If any section, subsection, subdivision, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or otherwise invalid, such invalidity shall not affect the validity of this entire Ordinance or any of the remaining portions hereof. The City Council hereby declares that it would have passed this Ordinance, and each section, subsection, subdivision, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sees, clauses or phrases be declared unconstitutional or otherwise invalid.

SECTION 4. The Mayor shall sign and the City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published and posted pursuant to the provisions of law in that regard and this Ordinance shall take effect 30 days after its final passage.

FIRST READING at a regular meeting of the City Council of said City held on the 24th day of January, 2011, and finally adopted and order posted at a regular meeting held on the ___ day of _____, 2011.

MAYOR OF THE CITY OF CYPRESS

ATTEST:

CITY CLERK OF THE CITY OF CYPRESS

STATE OF CALIFORNIA)
COUNTY OF ORANGE) SS

I, DENISE BASHAM, City Clerk of the City of Cypress, DO HEREBY CERTIFY that the foregoing Ordinance was duly adopted at a regular meeting of said City Council held on the ___ day of _____, 2011, by the following roll call vote:

AYES: COUNCILMEMBERS:
NOES: COUNCILMEMBERS:
ABSENT: COUNCILMEMBERS:

CITY CLERK OF THE CITY OF CYPRESS

Sec. 1-7. General penalty; continuing violations.

(a) Whenever in this Code or in any other ordinance of the city or in any order, rule, or regulation issued or promulgated by any duly authorized officer or agent of the city, any act is prohibited or is made or declared to be unlawful or the doing of any act is required and the failure to do that act is declared to be unlawful, and no specific penalty is provided therefor, violation of said provision shall be a misdemeanor and shall be punished by a fine not exceeding one thousand dollars (\$1,000.00) or imprisonment for a term not exceeding six (6) months, or by both such fine and imprisonment.

For the purposes of this section 1-7, any violation of the Cypress Municipal Code ("Municipal Code Violation") may be processed through the administrative citation provisions established within this section 1-7 and section 1-12 providing, however, when processed as administrative citations, all such municipal code violations shall be subject to the maximum amounts established in subsection 1-7(c).

Nothing in this chapter shall prevent the city from exercising its discretion to select between criminal enforcement for a municipal code violation and enforcement through the administrative citation process established herein.

(b) Each and every day during any portion of which any violation of this Code or any other ordinance, order, rule, or regulation of the city continues shall constitute a separate offense, and may be punished accordingly.

(c) When specifically designated as such, violations of any provision of this Code or any other city ordinance, rule, order, or regulation shall be an infraction, which shall be punished as follows:

First violation: \$100.00 fine

Second violation: \$200.00 fine

Third violation, and each subsequent violation of the same ordinance or permit within one (1) year from the date of the first violation, may at the city's discretion be treated as an infraction and fined in the amount of five hundred (\$500.00) per occurrence, or may be deemed a misdemeanor and as such, shall be punishable as set forth in subsection (a).

Notwithstanding anything to the contrary designating an offense a misdemeanor, when the city attorney, or the district attorney files in a court having jurisdiction over misdemeanor offenses a complaint specifying that an offense otherwise a misdemeanor is an infraction, the violation shall be deemed an infraction for all purposes.

(d) Citation power shall be delegated by resolution of the city council.

(e) Unless otherwise specifically provided herein, the Orange County Courts' Countywide Uniform Bail Schedule is hereby adopted by this reference, as if set forth in full, for violations of the Code of the City of Cypress.

(Ord. No. 15; Ord. No. 833, § 1, 12-11-89; Ord. No. 998, §§ 1, 2, 2-14-00.)