

**ORDINANCE 99- 5**  
**TOWN OF OPHIR, COLORADO**

**AN ORDINANCE AMENDING REGULATIONS FOR THE CONTROL AND LICENSING OF DOGS IN THE TOWN OF OPHIR, AND ESTABLISHING FINES AND PENALTIES IN CONNECTION THEREWITH.**

**WHEREAS**, the General Assembly of the Town of Ophir, State of Colorado, has determined that the regulation of dogs in the Town of Ophir will promote and protect the health, safety, and general welfare of the Ophir community; and

**WHEREAS**, the General Assembly finds that in order to effectively enforce dog control regulations, amendments to Ordinance 94-13 are necessary; and

**WHEREAS**, the General Assembly held two public hearings on this Ordinance following public notice in accordance with law concerning the adoption of this Ordinance.

**NOW, THEREFORE, BE IT ORDAINED BY THE GENERAL ASSEMBLY OF THE TOWN OF OPHIR, STATE OF COLORADO, the following:**

**SECTION 1. PURPOSE**

The regulations in this Ordinance, and in any subsequent amendments to this Ordinance, shall regulate the control and licensing of dogs within the Town of Ophir.

**SECTION 2. DEFINITIONS**

For the purpose of this Ordinance, the following definitions shall apply:

- A. Abandon. Abandon means leaving an animal without adequate provision for the animal's proper care having been made by its Owner.
- B. Animal. Any living non-human creature, whether domestic or wild.
- C. Animal Control Officer. Animal Control Officer means a person engaged in animal control designated by the Ophir General Assembly pursuant to C.R.S. 30-15-105, or the San Miguel County Sheriff or his/her deputies, or a Colorado Division of Wildlife officer.
- D. Barking Dog. A dog that makes loud and persistent or habitual barking, howling, or yelping noises emanating from its throat, thereby

unreasonably disturbing any person or persons residing anywhere in the Town of Ophir.

- E. Bodily Injury. Any physical injury that results in severe bruising, muscle tears, skin lacerations or bone fracture.
- F. Command Leash. Voice and sight control over an animal by an Owner, such that the animal is continuously within Owner's sight and obediently responds to the Owner's voice command.
- G. Companion Animal. Domestic dogs, domestic cats, small pet birds and other domesticated species which are not livestock or wildlife.
- H. Defecate. Defecate with respect to any dog means to defecate on the property of any person other than that of the Owner.
- I. Dog. Any animal of the canine species, regardless of gender.
- J. Dog at Large. Any dog running at large (off the Owner's property) within the Town of Ophir and not under a command leash.
- K. Harass. Harass means to endanger, worry, impede, annoy, pursue, disturb, molest, rally, concentrate, harry, chase, drive, herd, take or torment wildlife.
- L. Owner. Any person or persons owning, keeping, harboring, or responsible for the care, custody, and/or possession of a dog, whether temporarily or permanently.
- M. Permit. To suffer, allow, consent, authorize, approve, let, tolerate, or acquiesce; to knowingly fail to prevent; to knowingly fail to control.
- N. Provoked. A dog which bites or attacks a person or animal who is trespassing upon, breaking into or otherwise destroying or defacing its Owner's property, or which is purposefully enticed to anger, or which is defending its Owner or persons related to the Owner from attack or threatening behavior by humans or animals.
- O. Serious Bodily Injury. Serious bodily injury means bodily injury which, either at the time of the actual injury or at a later time, involves a substantial risk of death, a substantial risk of permanent disfigurement, or a substantial risk of protracted loss or impairment of the function of any part or organ of the body, or breaks or fractures.
- P. Stray Dog. Any dog which is reasonably determined to have no Owner.

- Q. Threaten or Threatening Behavior. Threaten or threatening behavior with respect to any dog or person means to demonstrate tendencies that would cause a reasonable person or believe that the dog or person may inflict bodily injury upon or cause the death of a person or companion animal.
- R. Trashing Dog. A dog that goes upon any sidewalk, street alley, or private lands or premises without the permission of the Owner of such premises or sidewalk, street, or alley and breaks, tears up, crushes or injures any lawn, flower bed, plant, shrub, tree or garden or other public or private property whatsoever, or defecates thereon, or which knocks over or gets into any trash, refuse, garbage, or recycling container, or which consumes trash, garbage or refuse.
- S. Vicious Dog. A dog that bites, attacks or harms human beings or other animals, or which inflicts bodily injury or serious bodily injury upon any human being or other animal, either on private or public property.

**SECTION 3. MENS REA/AFFIRMATIVE DEFENSES**

- A. Unless a provision of this Ordinance specifies a stricter standard, in all actions to enforce the provisions of this Ordinance prohibiting any conduct, the conduct is unlawful and strict liability applies, regardless of the defendant's knowledge, intent, or mental state.
- B. An affirmative defense to any action to enforce the provisions of this Ordinance pertaining to an offending dog, shall be that the animal was provoked. The defendant shall have the burden of proof to establish the existence of provocation.

**SECTION 4. DOG LICENSE REQUIRED**

- A. The Owner of any dog which resides in the Town, or which is kept or harbored in the Town, for a period of thirty (30) days or more shall obtain a license for such dog:
  - 1. For current resident Owners, by August 15, 1999, and thereafter annually prior to March 1<sup>st</sup>; or
  - 2. For new resident Owners, within thirty (30) days after relocating temporarily or permanently to the Town; or
  - 3. For current or new resident Owners, within thirty (30) days after the time the dog reaches six (6) months of age.

Prior to issuance of a license, the Owner shall present certification that the dog has a current rabies inoculation. A license may be purchased from the Town Manager.

B. The Annual Licensing Fees are as follows:

	<u>Neutered</u>	<u>Not Neutered</u>
1. First Dog per residence	\$ 5.00	\$ 30.00
2. Second Dog per residence	\$ 10.00	\$ 60.00
3. Third and each subsequent dog per residence	\$150.00	\$150.00

C. The following dogs are exempt from the licensing fees, but must be licensed:

1. Dogs used to assist law enforcement officers;
2. Dogs trained to assist disabled persons; and
3. Dogs owned by Owners over 60 years of age.

D. The Owner shall supply all required information at the time of applying for a dog license.

## SECTION 5. VIOLATIONS

- A. Failure to License. No Owner of any dog shall fail to obtain a dog license for such dog as required by Section 4 above. Any and each such failure constitutes a separate violation for each month during which such dog continues to be unlicensed.
- B. Barking Dog. No Owner of any dog shall permit such dog to bark or be a barking dog.
- C. Defecating (Failure to Remove). No Owner of any dog shall permit such dog to defecate, without immediately removing, upon a common thoroughfare street, sidewalk, play area, park, any other public property, or to defecate upon any private property when prior permission of the owner or tenant of such property has not been obtained.
- D. Trashing. No Owner of any dog shall permit such dog to trash or to engage in trashing behavior.
- E. Threatening Behavior. No Owner of any dog shall permit such dog to threaten or engage in threatening behavior toward any person or companion animal.

- F. Vicious Behavior. No person shall own, keep or harbor a vicious dog. A vicious dog is declared further to be a threat to public safety and welfare and, and upon notice and a hearing as required herein, the Municipal Court may order that the dog be banished from the Town or destroyed in a humane manner.
- G. Canine Trespass. No Owner of a dog shall permit such dog to enter private property, other than property owned or rented by such Owner without the permission of the person who owns or controls the property.
- H. Harassment of Wildlife. No Owner of a dog shall knowingly or negligently allow such dog to harass wildlife, whether or not the wildlife is actually injured by such dog.

Any person found to have violated, or who acknowledges violating the provisions of this Section 5 or any other provision of this Ordinance, shall be fined in accordance with Section 6 hereof.

**SECTION 6. PENALTIES**

- A. It shall be unlawful for any person to violate any of the provisions of this Ordinance.
- B. The penalty for any person who is found to have violated, or who acknowledges violating, any provision of this Ordinance, shall be a fine in the minimum amount set forth below for each separate violation:

<u>Violation</u>	<u>Section</u>	<u>Fine</u>
1. Failure to License	5(A)	\$25.00
2. Barking Dog	5(B)	\$25.00
3. Canine Trespass	5(G)	\$25.00
4. Defecating (Failure to Remove)	5(C)	\$50.00
5. Trashing	5(D)	\$50.00
6. Threatening Behavior	5(E)	\$50.00
7. Vicious Behavior	5(F)	\$100.00
8. Harassment of Wildlife	5(H)	\$50.00
9. All Other Violations		\$25.00

- C. Any person who is issued a citation for violation of any provision of this Ordinance, except Section 5(F) (Vicious Dog) above, may be offered a penalty assessment by a peace officer or animal control officer. The amount of the penalty assessment shall be the amount of the minimum fine set forth in Section 6(B), above. No penalty assessment shall be offered for a violation of Section 5(F), above.

- D. The maximum amount of any fine imposed for any person who is found to have violated, or who acknowledges violating, any provision of this Ordinance, shall be Five Hundred (\$500.00) Dollars for each separate violation.
- E. Any person who is found to have violated, or who acknowledges violating, Section 5(F) of this Ordinance (Vicious Dog), shall be required to pay in addition to any fine assessed by the Municipal Court the medical and/or veterinarian bill(s) of any victim(s) of the subject dog's vicious behavior, and may be required to pay any other appropriate restitution ordered by the Municipal Court.

#### **SECTION 7. AUTHORITY TO IMPOUND**

- A. Dogs at Large. The Animal Control Officer is authorized to impound any dog at large.
- B. Barking, Trashing or Threatening Dog. The Animal Control Officer is authorized to impound any dog which is barking, trashing or engaging in threatening behavior as described in Section 2 hereof, unless the Owner of the dog immediately exercises sufficient control over the dog and promises continued control so that the Officer is reasonably assured that such behavior will not continue.
- C. Vicious Dog. The Animal Control Officer is authorized to impound any vicious dog. If the Officer reasonably believes that he or she cannot pick up the dog without risking or suffering bodily or serious bodily injury, and determines that the dog represents a serious and immediate threat to public safety and welfare, the Officer is authorized to destroy the dog.
- D. Notice of Impoundment. The Animal Control Officer shall notify the Owner of an impounded animal, if known, of the impoundment as soon as practicable after the animal is impounded. Notice may be given by any means reasonably calculated to provide actual and expedient notice to the Owner, including posting a notice at the Ophir Post Office.
- E. Impoundment Fees. Fees for impoundment, including pick-up, shall be established, and from time to time modified, by resolution of the General Assembly.
- F. Release of Impounded Animals. No animal shall be released until all pick-up and impoundment fees have been paid, unless otherwise ordered by the Municipal Court. No dog impounded as a Vicious Dog shall be released prior to a hearing and determination by the Municipal Court that the Owner of the dog can and will exercise sufficient control over the dog, so as to prevent the

dog from engaging in further threatening or vicious behavior. Such hearing shall be held no later than ten (10) days after the dog is impounded. If the Court determines that the Owner of the dog cannot or is unlikely to exercise sufficient control over the dog, the Court may order the dog banished from the Town or destroyed in a humane manner.

**SECTION 8. BANISHMENT**

Upon conviction the Municipal Court shall order that the Owner evidence immediate ability to control the offending dog or require the offending dog to be immediately removed from the Town of Ophir. Failure to comply with a banishment order of the Court shall be a violation of this Ordinance, and shall also be punishable by civil or criminal contempt of court proceedings. Any dog which has been banished may be impounded if the dog's Owner fails to promptly comply with the banishment order.

**SECTION 9. NON-APPLICABILITY**

This Ordinance shall not apply to Owners whose dogs are actually working livestock, locating or retrieving wild game in season for a licensed hunter, or assisting law enforcement officers, or while actually being trained for these pursuits.

**SECTION 10. DISPOSITION OF FINES AND FORFEITURES**

All fines and forfeitures for violations of this Ordinance shall be paid directly into the general fund of the Town of Ophir.

**SECTION 11. ENFORCEMENT**

The Animal Control Officer may enforce this Ordinance when a person has signed a complaint against an offending dog or its Owner. This section shall not be construed to prevent the Animal Control Officer from enforcing this Ordinance if a person has not signed such a complaint.

**SECTION 12. PROSECUTING ATTORNEY**

The Ophir Town Attorney may prosecute any actions required under this Ordinance. Any person found guilty of violating this Ordinance shall pay all costs assessed by the Court.

**SECTION 13. SEVERABILITY**

If any provision of this Ordinance or portion thereof is held by a court of competent jurisdiction to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect any other provision which can be given effect without the invalid portion.