ORDINANCE NO. 3619

AN ORDINANCE AMENDING TITLE 6 CHAPTER 8 OF THE RAPID CITY MUNICIPAL CODE OF THE CITY OF RAPID CITY BY AMENDING TITLE 6 CHAPTER 8 AND SECTION 100 REGULATING DANGEROUS ANIMALS; AND AMENDING TITLE 6 CHAPTER 4 SECTION 010 DEFINING CERTAIN TERMS

BE IT ORDAINED by the City of Rapid City that Section 6.04.010 of Title 6 Chapter 4 of the Rapid City Municipal Code is amended to read as follows:

6.04.010 **Definitions.**

For purposes of this title, the following words and phrases shall have the meanings herein ascribed to them:

"Animal" means any mammal, bird, reptile, amphibian or fish, except humans.

"Animal Control Officer" means any person employed or appointed by the City's designated animal control authority who is authorized and granted police power to investigate and enforce violations relating to animal control or cruelty under the provision of this Ordinance. Police officers may act as Animal Control Officers.

"At large" means any animal which is off the property of its owner and not under control of a competent person.

"City's designated animal control authority" means that organization or agency charged with enforcement of the City's animal ordinances. City's designated animal control authority shall include any contracted agent.

"Contracted agent" means the person, organization, governmental agency, or corporation with whom the city and/or county contract to perform animal control functions.

"Dangerous animal" means an animal which presents such a severe risk of serious physical harm or death to human beings or other animals that it should not be allowed to live. Dangerous animal includes any animal that has:

(a) without provocation, inflicted substantial bodily harm on a human being on public or private property; or

(b) been found to be a potentially dangerous animal, and, after such finding, aggressively bites, attacks, or endangers the safety of humans or domestic animals.

"Direct control" means immediate, continuous physical control of an animal such as by means of a leash, cord, secure fence, or chain of such strength to restrain the animal and controlled by a person capable of restraining the animal, or safe and secure restraint within a

vehicle. If the controlling person is at all times fully and clearly within unobstructed sight and hearing of the animal, voice control shall be considered direct control when the animal is actually participating in training or in an official showing, obedience, or field event.

Any animal has been "exposed to rabies" within the meaning of this title if it has been bitten by, or been exposed to, any animal known to be or suspected of being infected with rabies.

"Impoundment" means the taking or picking up and confining of an animal by any Animal Control Officer.

"Inhumane treatment" means any act of mistreatment, torture, cruelty, neglect, abandonment, mutilation or inhumane slaughter of an animal that is not consistent with generally accepted training, use and husbandry procedures for the species, breed, physical condition and type of animal.

"Kennel" means any pet store or any lot or premises or portion thereof where four or more dogs, cats, rabbits or other household/domesticated animals, six months of age or older, are maintained, boarded, bred or cared for, in return for any compensation, or are kept for the purpose of sale.

"Mistreatment, torture or cruelty of an animal" means any act or omission whereby unnecessary, unjustifiable or unreasonable physical pain or suffering is caused, permitted or allowed to continue, including acts of mutilation.

"Muzzle" means a device constructed of strong, soft material or of metal designed to fasten over the mouth of an animal to prevent the animal from biting any person or other animal.

"Neglect of animal" means the failure to provide food, water, protection from the elements, adequate sanitation, adequate facilities, or care generally considered to be standard and accepted for an animal's health and well-being, consistent with the species, breed, physical condition and type of animal.

"Neutered dog/cat" means any male dog/cat which has undergone surgery to prevent reproduction, whose owner can provide proof of surgery.

"Owner" means any person, partnership, corporation, or other legal entity owning, harboring, or keeping any animal, or in the case of a person under the age of eighteen (18), that person's parent or legal guardian. An animal shall be deemed to be harbored if it is fed or sheltered for three (3) or more consecutive days. This definition shall not apply to any veterinary clinic or boarding kennel.

"Potentially dangerous animal" means any animal that, because of its aggressive nature, training or characteristic behavior, presents a risk of substantial physical harm or death to human beings, or would constitute a danger to human life, physical well-being, or property if not kept under the direct control of the owner. The term "potentially dangerous animal" includes any

animal that, according to the records of the City's designated animal control authority or any law enforcement agency:

(a) Has, when unprovoked, bitten, attacked, endangered, or inflicted injury on a human being on public or private property, or, when unprovoked, has chased or approached a person upon the street, sidewalks, or any public grounds in a menacing fashion or apparent attitude of attack, provided that such actions are attested to in a sworn statement by one or more persons and dutifully investigated and substantiated by any of the above-referenced authorities;

(b) Has more than once severely injured or killed a domestic animal or livestock while off the owner's property; or

(c) Has been used primarily or in part for the purpose of animal fighting, or is an animal trained for animal fighting.

"Sanitary condition" means a condition of good order and cleanliness to minimize the possibility of disease transmission.

"Shelter manager" means the owner and/or supervisor of the animal shelter, either as an employee of the city or a contractor with the city. The individual is charged, together with the Rapid City police department, with the overall enforcement of this title, and performs the professional services required in the care, treatment or euthanization of the animals being handled.

"Spayed dog/cat" means any female dog/cat which has undergone surgery to prevent conception, whose owners can provide suitable proof of such surgery.

"Substantial bodily harm" means any physical injury to a human being that results in muscle tears or disfiguring lacerations or requires multiple sutures or cosmetic surgery.

"Under restraint" means that an animal is secured by a leash, led under the control of a person physically capable of restraining the animal and obedient to that person's commands, enclosed within a vehicle being driven or parked on the streets, or securely enclosed within the real property limits of the owner's premises.

"Wild animal" means any animal(s) other than domestic dogs and cats, which in a wild state are carnivorous or which because of their nature or physical makeup are capable of inflicting serious physical harm or death to human beings, including, but not limited to: animal(s) which belong to the cat family, snakes which are poisonous or otherwise present a risk of serious physical harm or death to human beings as a result of their nature or physical makeup, and all raccoons, skunks, foxes, bears, coyotes, wolverines, badgers, lions and tigers.

BE IT FURTHER ORDAINED by the City of Rapid City that Section 6.08.100 of Title 6 Chapter 8 of the Rapid City Municipal Code is repealed as written and a new Section 6.08.100 of Title 6 Chapter 8 of the Rapid City Municipal Code be inserted regulating dangerous and potentially dangerous animals to read as follows:

6.08.100 **Dangerous and Potentially Dangerous Animals**

A. Purpose and Intent.

The purposes of this Ordinance are to promote the public health, safety, and general welfare of the citizens of the City of Rapid City. It is intended to be applicable to "dangerous" and "potentially dangerous" animals, as defined herein, by ensuring responsible handling by their owners through registration, confinement, and destruction.

B. Procedure for Initiating an Investigation into an Animal's Dangerousness.

(1) An Animal Control Officer may initiate an investigation into the dangerousness of an animal based on his or her own observations. Upon initiating an investigation, the Animal Control Officer shall notify the owner of the animal that an investigation has begun.

(2) Any adult person may request under oath that an animal be investigated as to its dangerousness by submitting to the City's designated animal control authority a sworn, written complaint on a form approved by the City's designated animal control authority. Upon receipt of such complaint, an Animal Control Officer shall notify the owner of the animal that a complaint has been filed and that an investigation into the allegations as set forth in the complaint will be conducted. The Animal Control Officer will initiate his or her investigation within two (2) business days after receipt of the complaint.

(3) At any time during the course of an investigation, the Animal Control Officer may impound the animal being investigated if the Animal Control Officer determines that the public safety so requires.

C. Investigation.

(1) The Animal Control Officer shall thoroughly investigate each complaint to determine of the animal is dangerous or potentially dangerous. The Animal Control Officer shall consider all relevant factors, including, but not limited to, severity of injury to the victim, statements from witnesses/victims previous aggressive history of the animal, observable behavior of the animal, and circumstances of the incident.

(2) At the conclusion of an investigation, the Animal Control Officer may:

(a) Find that the animal is neither dangerous nor potentially dangerous and, if the animal is impounded and not quarantined pending a rabies evaluation, release the animal to its owner upon payment of any impoundment fees; or

(b) Find that the animal is potentially dangerous and order the owner to comply with the requirements for keeping potentially dangerous animals set forth in subsection J, and, if the animal is impounded and not quarantined pending a rabies evaluation, release the animal to its owner after the owner has paid all fees incurred for the impoundment and complied with the relevant parts of subsection J herein. If all impoundment fees have not been paid and conditions met within ten (10) business days after the owner receives notice that the Animal Control Officer has found the animal to be potentially dangerous, the Animal Control Officer shall cause the animal to be destroyed. Such destruction shall not relieve the owner of the responsibility for payment of impoundment fees.

(c) Find that the animal is dangerous and order the animal destroyed in accordance with subsection K herein.

D. Notification of Dangerous or Potentially Dangerous Animal Finding.

(1) Within three (3) business days after finding an animal dangerous or potentially dangerous, the Animal Control Officer shall notify the owner by registered mail of the animal's designation as a dangerous or potentially dangerous animal. In the case of a potentially dangerous animal, such notice shall state any specific restrictions and conditions for keeping the animal, as set forth in subsection J of this Ordinance. The Animal Control Officer also shall notify the City Attorney and the Police Department of the designation of any animal as a dangerous or potentially dangerous animal. Such notification shall describe the animal and specify any requirements or conditions placed upon the animal or owner.

(2) The notice shall inform the owner that he or she may request, in writing, within five (5) business days after delivery of the notice, a hearing to contest the Animal Control Officer's finding and designation and shall contain instructions on how to appeal the finding and designation.

E. Notification to Complainant.

In all cases, the Animal Control Officer shall notify the complainant of the Animal Control Officer's finding and designation within three (3) days of making such finding and designation. Notice to the complainant shall be made by first class mail, and shall contain instructions on how to appeal the finding and designation.

F. Destruction of Unclaimed Animal.

If the Animal Control Officer cannot with due diligence locate the owner of an animal that has been seized pursuant to this section, the Animal Control Officer shall cause the animal to be impounded for not less than five (5) business days. If, after five (5) business days, the owner fails to claim the animal, the Animal Control Officer may cause the animal to be destroyed.

G. Dangerous Animal Review Board.

There is hereby established a Dangerous Animal Review Board which shall have the authority to review findings and determinations made by the Animal Control Officer. The Dangerous Animal Review Board shall consist of the head of the shelter manager, a local veterinarian, and a law enforcement officer who falls into one of the following categories:

(1) Is a K-9 officer employed by the Rapid City Police Department, the Pennington County Sheriff's Office, or the South Dakota Highway Patrol; or

(2) Is the liaison officer between the Rapid City Police Department and the City's designated animal control authority.

The Dangerous Animal Review Board shall convene as necessary to hear appeals from an Animal Control Officer's finding and determination. The Dangerous Animal Review Board shall be chaired by the shelter manager, who shall select two (2) other individuals from the above categories to serve as the remaining members of the Dangerous Animal Review Board. In no event shall any member of the Dangerous Animal Review Board hear any case in which that member has a personal interest.

In the event the head of the City's designated animal control authority is unable to perform his or her duties as a member of the Dangerous Animal Review Board, he or she shall select an alternate to act in his or her stead. Such alternate shall be a local physician or animal trainer. Such alternate shall chair the hearing, and select the individuals to serve as the remaining members of the Dangerous Animal Review Board for that appeal.

The Dangerous Animal Review Board shall be a voluntary position and no additional compensation shall be paid to the members thereof by the City of Rapid City.

H. Hearing on Dangerous or Potentially Dangerous Animal Declaration.

(1) If the owner or complainant disagrees with the Animal Control Officer's finding and determination, he or she may request, in writing, a hearing before the Dangerous Animal Review Board within five (5) business days after receiving the Animal Control Officer's determination. The Dangerous Animal Review Board shall hold a hearing not less than three (3) nor more than ten (10) business days after receiving the owner's or complainant's written request for such a hearing. The purpose of the hearing shall be to uphold, overturn, or modify the Animal Control Officer's finding and determination. The chair of the Dangerous Animal Review Board shall provide notice of the date, time, and location of the hearing to the animal owner by registered mail and to the complainant by first-class mail. Notice must be received by the owner and complainant a minimum of two (2) calendar days prior to the hearing.

(2) At the hearing, all interested persons shall be given the opportunity to present evidence on the issue of the animal's dangerousness or potential dangerousness. Criteria to be considered in a hearing required by this section shall include but not be limited to the following:

(a) Provocation,

(b) Severity of attack or injury to a person or domestic animal,

(c) Previous aggressive history of the animal,

(d) Observable behavior of the animal,

(e) Site and circumstances of the incident,

(f) Score on dangerous animal evaluation form, and

(g) Statements from interested parties.

(3) The Dangerous Animal Review Board shall issue a decision upholding or overturning the Animal Control Officer's determination. The decision may be issued at the hearing, but in any case shall be issued within three (3) calendar days after the hearing.

(4) A determination by the Dangerous Animal Review Board that the animal is a potentially dangerous animal shall subject the animal and its owner to the provisions of subsection J. A determination that the animal is a dangerous animal shall result in the dangerous animal being destroyed on the sixth (6th) business day after the owner receives notice of the Dangerous Animal Review Board's determination.

(5) Failure of either the owner or the complainant to request a hearing within the prescribed time shall result in the Animal Control Officer's determination being a final determination.

I. Appeal from Dangerous or Potentially Dangerous Animal Declaration.

If the Dangerous Animal Review Board determines that an animal is dangerous or potentially dangerous after a hearing conducted under subsection H, that decision shall be final unless the owner or complainant, within five (5) business days after receiving notice that the animal has been determined to be dangerous or potentially dangerous, applies to the circuit court for any remedies that may be available.

J. Keeping of Potentially Dangerous Animals.

No person may keep within the boundaries of the City of Rapid City any potentially dangerous animal, unless the following conditions are met:

(1) *Leash.* No person having charge, custody, control, or possession of a potentially dangerous animal shall allow the animal to exit its kennel, pen, or other proper enclosure unless such animal is securely attached to a leash not more than four (4) feet in length. No such person shall permit a potentially dangerous animal to be kept on a chain, rope, or other type of leash

outside its kennel or pen unless a person capable of controlling the animal is in physical control of the leash.

(2) *Muzzle.* It shall be unlawful for any owner or keeper of a potentially dangerous animal to allow the animal to be outside of its proper enclosure unless it is necessary for the animal to receive veterinary care or exercise. In such cases, the animal shall wear a properly fitted muzzle to prevent it from biting humans or other animals. Such muzzle shall not interfere with the animal's breathing or vision.

(3) *Confinement.* Except when leashed and muzzled as provided in this section, a potentially dangerous animal shall be securely confined indoors or confined in a locked pen or other secure enclosure that is suitable to prevent the animal from escaping. The enclosure shall include shelter and protection from the elements and shall provide adequate exercise room, light and ventilation. The enclosed structure shall be kept in a clean and sanitary condition and shall meet the following requirements:

(a) The structure must have secure sides and a secure top;

(b) The structure must have a bottom permanently attached to the sides or the sides must be embedded not less than one (1) foot into the ground; and

(c) The structure must be of such material and closed in such a manner that the animal cannot exit the enclosure on its own.

(4) *Indoor Confinement.* No potentially dangerous animal shall be kept on a porch, patio, or in any part of a house or structure that would allow the animal to exit such building on its own volition. In addition, no potentially dangerous animal shall be kept in a house or structure when screen windows or doors are the only obstacle preventing the animal from exiting the structure.

(5) *Signs.* All owners, keepers, or harborers of potentially dangerous animals shall display in a prominent place on any entrance to their premises a sign easily readable by the public using the words "Beware of [type of animal]."

(6) *Sterilization of Potentially Dangerous Animals.* All potentially dangerous animals shall be permanently altered so that they are unable to reproduce. Such alteration shall occur prior to the issuance of the potentially dangerous animal permit.

(7) *Obedience Class*. The owner or keeper of a potentially dangerous animal shall, with the potentially dangerous animal, attend an obedience training course of a duration not less than four (4) weeks weeks. This must be completed within eight (8) weeks of the initial issuance of a potentially dangerous animal permit, and proof of attendance shall be submitted to the City's designated animal control authority within that time.

(8) *Permit*. The owner of a potentially dangerous animal shall, within five (5) business days after the classification of the animal as potentially dangerous, and prior to the

animal's release to its owner if the animal is impounded, or upon acquisition of such an animal, obtain an annual permit from the City's designated animal control authority to harbor the animal. The fee for such permit shall be one hundred dollars ($100.00) per year. The permit for maintaining a potentially dangerous animal shall be presented to an Animal Control Officer upon demand.

(9) *Tag.* At the time the permit is issued, a red circular tag shall be issued to the owner of the potentially dangerous animal by the City's designated animal control authority. The tag shall be worn at all times by the animal, if biologically possible.

(10) *Collar*. At the time the permit is issued, a colorfast, fluorescent green colored collar of sufficient width as to easily identify the animal as a potentially dangerous animal shall be issued to the owner of the potentially dangerous animal. The collar shall be worn whenever the animal is outside of the owner's house to clearly and easily identify it as a potentially dangerous animal.

(11) *Notification of Escape.* The owner or keeper of a potentially dangerous animal shall notify the City's designated animal control authority immediately if such animal escapes from its enclosure or restraint and is at large. Such immediate notification shall also be required if the animal bites or attacks a person or domestic animal or livestock.

(12) *Microchip.* Prior to the issuance of a permit, the animal shall have an identifying microchip implanted, if biologically possible.

(13) *Failure to Comply.* It shall be unlawful and a Class II misdemeanor for any owner of a potentially dangerous animal to fail to comply with the requirements and conditions set forth in this subsection. Any animal found by an animal control officer to be in violation of this subsection shall be immediately seized and destroyed on the second business day after seizure. Upon the third violation by one owner, the City's designated animal control authority shall refuse to issue that owner any future potentially dangerous animal permits and shall revoke all outstanding potentially dangerous animal permits issued to that owner.

K. Destruction of Dangerous Animals.

It shall be unlawful and a Class II misdemeanor for any owner of a dangerous animal to possess any dangerous animal in the city limits. All animals finally declared dangerous shall be destroyed.

L. Change of Ownership.

(1) Any owner of a potentially dangerous animal who sells or otherwise transfers ownership, custody, or residence of the animal shall, within ten (10) business days after such change of ownership or residence, provide written notification to the City's designated animal control authority of the name, address, and telephone number of the new owner. It also shall be the responsibility of the person transferring ownership or custody of the animal to provide written notification of the animal's classification as potentially dangerous to the person receiving

the animal. The previous owner shall furnish a copy of such notification to the City's designated animal control authority along with written acknowledgment by the new owner of his receipt of such notification. The new owner shall notify the City's designated animal control authority and the Rapid City Police Department of any changes of ownership, custody, or residence of the animal within three (3) business days after receiving the required information from the previous owner.

(2) Any person receiving an animal classified as potentially dangerous must obtain the required permit, tag, and enclosure prior to acquisition of the animal. The new owner shall comply fully with the provisions of this section pertaining to obtaining bond, payment of fees, and maintenance, control, and ownership of a potentially dangerous animal.

M. Continuation of Potentially Dangerous Animal Declaration.

(1) Any animal that has been declared potentially dangerous by any agency or department of this City, another municipality, county, or state shall be subject to the provisions of this Ordinance for the remainder of its life unless the potentially dangerous animal designation is removed in accordance with paragraph (2) this subsection. The person owning or having custody of any animal designated as a potentially dangerous animal by any municipality, county, or state government shall notify the City's designated animal control authority of the animal's address and conditions of maintenance within ten (10) days of moving the animal into the City of Rapid City. The restrictions and conditions of maintenance of any animal declared potentially dangerous by this City, another municipality, county, or state shall remain in force while the animal remains in the City.

(2) The owner of any potentially dangerous animal may petition the Dangerous Animal Review Board for a removal of the potentially dangerous animal designation after three (3) consecutive years during which the owner has received no violations under this Ordinance. The Dangerous Animal Review Board shall, upon the owner's petition, review the designation of an animal as potentially dangerous and, if the animal is determined no longer to be potentially dangerous, the potentially dangerous animal designation shall be removed.

N. Police and Military Animals.

Nothing in this section shall be construed to limit or affect the use of animals by law enforcement, military, or rescue organizations.

O. Conflicting Ordinances.

All other ordinances of the City of Rapid City that are in conflict with this Ordinance are hereby repealed to the extent of such conflict.

P. Severability.

The provisions of this Ordinance are declared to be severable. If any section, sentence, clause, or phrase of the Ordinance shall for any reason be held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance, but they shall remain in effect; it being the legislative intent that this Ordinance shall remain in effect notwithstanding the validity of any part.

Q. Retroactivity.

No animal maybe declared dangerous or potentially dangerous based solely on the animal's activity prior to the effective date of this ordinance; however, such activity, including, but not limited to, substantiated reports of bites or aggressive behavior, may be considered during a current investigation.

CITY OF RAPID CITY

_____
Mayor

ATTEST:

_____
Finance Officer
(SEAL)

First Reading:
Second Reading:
Published:
Effective