

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE CITY OF HOLLISTER ADDING  
CHAPTER 6.20 "MANDATORY SPAY AND NEUTER PROGRAM" TO THE  
HOLLISTER MUNICIPAL CODE**

**THE CITY COUNCIL OF THE CITY OF HOLLISTER HEREBY ORDAINS AS  
FOLLOWS:**

**SECTION 1. Findings.**

The City Council adopts Chapter 6.20 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 and Agricultural Code Section 31683 and California Health and Safety Code Section 122331.
- (b) The intent of SB 861 was to enable local governments to pass ordinances restricting the breeding of specific dog breeds by mandating the spaying and neutering of specific dog breeds.
- (c) It is the City Council's intention that nothing in this Chapter shall be deemed to conflict with state law as contained in the California Food and Agricultural Code and California Health and Safety Code.
- (d) It is the City Council's intention that nothing in this Chapter shall be construed to prevent dog owners in compliance with this section from maintaining intact breeds.
- (e) Pit bull breed and mixes and Chihuahua breed and mixes constitute a majority of unadopted dogs held in the Hollister Animal Shelter. In 2009 50 Chihuahuas and mixes (22%) and 90 pit bulls and mixes (38%) were euthanized after the maximum holding time for adoptions had expired. As of August 24, 2010, out of 208 City dogs that were euthanized, 55 were Chihuahuas (26%) and 70 Pit Bulls (34%).
- (f) In 2009 Hollister Animal Control provided intake services to 768 dogs within the city limits. Of those dogs requiring the services of Hollister Animal Control, pit bull breed and pit bull mixes constituted 18% (141) and Chihuahuas and Chihuahua mixes accounted for 23% (176). As of August 24, 2010, Chihuahuas accounted for 117 intakes (19.4%) and Pit Bulls accounted for 122 intakes (20%), from a total of 626 intakes.
- (g) To protect the public health, safety and welfare, it is the desire of the City Council to modify the Hollister Municipal Code consistent with California

Health and Safety Code section 122331, regarding the mandatory spaying and neutering of Pit Bull and Chihuahua breeds and the permissive maintenance and breeding of intact pit bull and Chihuahua breeds.

- (h) Restricting the maintenance and breeding of intact pit bulls and Chihuahua and requiring the spaying and neutering of pit bull and Chihuahua breeds will not prevent responsible pet owners and pet breeders from owning, breeding, or showing pit bull or Chihuahua breeds.

**SECTION 2.**        **Chapter 6.20 added.** Chapter 6.20 of the Hollister Municipal Code entitled “Mandatory Spay and Neuter Program” is hereby added to read as follows:

**Chapter 6.20    Mandatory Spay and Neuter Program (California Health and Safety section 122331)**

**Section 6.20.010    Purpose and intent.**

- A. Pursuant to California Health and Safety Code section 122331, it is the purpose and intent of this Chapter to require the mandatory spaying and neutering of all restricted dogs, as defined in Section 6.20.020, whose owners have not obtained an unaltered dog certification to maintain an intact restricted dog.
- B. It is the purpose and intent of this Chapter to establish a permit system allowing responsible owners to maintain an intact restricted dog and to breed restricted dogs.

**Section 6.20.020    Definitions.**

A. Except as otherwise provided by this section, the definitions applicable to the City’s animal control regulations contained in Chapter 6.13 apply to this chapter as well.

B. As used in this chapter, the following words and phrases have the following meanings:

“Animal Control” means the department of the City that is responsible for the regulations specified in Title 6 of the Hollister Municipal Code.

“Chihuahua” includes any dog that is a Smooth Coat Chihuahua, Long Coat Chihuahua or any dog that exhibits physical traits of any one or more of the above breeds or any dog exhibiting those distinguishing characteristics which conform to the standards established by the American Kennel Club (“AKC”), United Kennel Club (“UKC”), or American Dog Breeders Association (“ADBA”) for any of the above breeds. These standards are listed on the clubs’ websites.

“City” means the City of Hollister.

“Department” means Animal Control of the City of Hollister.

“Dog Registry” means the American Kennel Club (“AKC”), United Kennel Club (“UKC”), or American Dog Breeders Association (“ADBA”).

“Pit bull” includes any dog that is a Bull Terrier, Miniature Bull Terrier, American Pit Bull Terrier, American Staffordshire Terrier, Staffordshire Bull Terrier, or any dog that exhibits physical traits of any one or more of the above breeds or any dog exhibiting those distinguishing characteristics which conform to the standards established by the American Kennel Club (“AKC”), United Kennel Club (“UKC”), or American Dog Breeders Association (“ADBA”) for any of the above breeds. These standards are listed on the clubs’ websites.

“Puppy” means a dog under the age of six (6) months.

“Unaltered” means an animal that has not been spayed or neutered.

### **Section 6.20.030 Mandatory spaying, neutering of restricted dogs.**

A. The following breeds of dogs are “restricted dogs,” and are subject to the mandatory spay, neutering, and unaltered dog license requirements of this chapter:

1. Chihuahuas, as defined in Section 6.20.010; and
2. Pit Bulls, as defined in Section 6.20.010.

B. The following animals are exempt from the provisions of this section:

1. Restricted dogs documented as having been appropriately trained and actually being used by public law enforcement agencies for law enforcement activities, or dogs designated as breeding stock by an appropriate law enforcement agency or organization approved by the Animal Control supervisor after consultation with knowledgeable professionals;

2. Restricted dogs documented as having been appropriately trained and actually being used by search and rescue agencies for search and rescue activities, or dogs designated as breeding stock by an appropriate search and rescue agency or organization approved by the Animal Control supervisor after consultation with knowledgeable professionals;

3. Restricted dogs certified by a licensed veterinarian as having a health

reason for not being spayed/neutered;

4. Restricted dogs boarded in a licensed kennel or a business which boards such animals for professional training or resale.

C. No person shall own, keep, or harbor a restricted dog in violation of this section.

D. No person shall own, keep, or harbor a dog over the age of six (6) months which has not been spayed or neutered unless such person holds for the animal an unaltered dog certification for the animal issued pursuant to this Chapter

E. Any person intentionally providing care or sustenance for a restricted dog shall be deemed the owner of such dog and shall comply with this Chapter.

#### **Section 6.20.040 Determination of Breed.**

A. Determination. The Department will make a breed determination upon request, or upon contact with, or impoundment of a dog believed to be an unaltered restricted dog. The determination shall be made by an Animal Control officer with the knowledge and experience sufficient to identify the restricted dog.

B. Appeal. The dog owner or custodian may appeal a breed determination by filing a written request for appeal with the Department within ten (10) days after notice of the determination is mailed to the owner or custodian. No provision herein shall prohibit personal service. The determination of breed by Animal Control is deemed final if a timely appeal is not received by the Department. The hearing on the appeal shall be held within thirty (30) days after the Department's receipt of the request for appeal. The Department shall mail written notification to the owner or custodian of the date, time, and place of the hearing, at least ten (10) days prior to the hearing date. Failure of the owner or custodian or agent to appear at the hearing will result in forfeiture of the right to a hearing.

C. Hearing. The hearing may be informal and the rules of evidence not strictly observed. The hearing shall be conducted by a hearing officer designated by the Department. The determination of the hearing officer shall be final.

D. Notice of determination following hearing. The Department shall serve written notification of the determination to the owner or custodian of the dog within ten (10) days after the hearing.

E. Confirmation of compliance with Section 6.20.020. The owner or custodian of an unaltered restricted dog shall comply with Section 6.20.020 within fifteen (15) days after receipt of notice of determination that the unaltered dog is subject to Section 6.20.020, by submitting written documentation confirming compliance with

that section. If the dog has been moved to another location before such written confirmation is required, the owner or custodian shall provide the Department with information as to the dog's whereabouts, including current owner or custodian's name, address, and telephone number.

**Section 6.20.050 Unaltered dog certification; administration.**

A. The Animal Control supervisor shall administer a certification program to allow for unaltered restricted dogs over the age of six months when s/he determines that the following conditions have been met:

1. The dog is examined annually by a licensed veterinarian and is following the preventative health care program recommended by the veterinarian.
2. The owner has not been convicted or is not on probation or parole for, of one or more violations of the following offenses within the preceding thirty-six months:
  - a. Health and Safety Code §121705 (concealing bite information)
  - b. Hollister Municipal Code §6.04.450 (interference with poundmaster)
  - c. Hollister Municipal Code §6.08.020 (confinement of females in heat and dangerous dogs)
  - d. Any violation of Hollister Municipal Code Chapter 6.13 (dangerous animals)
  - e. Penal Code §286.5 (sexual assault on an animal)
  - f. Penal Code §596 (poisoning of animal)
  - g. Penal Code §597 (animal cruelty)
  - h. Penal Code §597a (cruelty re transportation)
  - i. Penal Code §597b (fighting animals)
  - j. Penal Code §597f (failure to care)
  - k. Penal Code §597j (training animal to fight)
  - l. Penal Code §597l (pet shop owner violations)
  - m. Penal Code §597t (confinement)
  - n. Penal Code §597u (prohibited killing methods)
  - o. Penal Code §597z (sale of dogs under 8 weeks)
  - p. Penal Code §597.5 (fighting dogs)
  - q. Penal Code §597.7 (confinement in motor vehicle)
  - r. Penal Code §598a (killing animal to sell pelt)
  - s. Penal Code §599 aa (seizure of fighting animals)
  - t. Penal Code §487e, §487f or §487g (theft of animal)
  - u. Any violation of another jurisdiction's ordinance or regulation

the content of which is consistent with the above Hollister Municipal Code sections.

3. The owner has not been convicted of two or more violations of the following offenses within the preceding twenty-four months:

- a. Hollister Municipal Code §6.08.010 (running at large)
- b. Hollister Municipal Code §6.08.170 (impoundment)
- c. Hollister Municipal Code §6.08.040 (vaccination required)
- d. Hollister Municipal Code §6.08.030 (maximum number of dogs)
- e. Hollister Municipal Code §6.08.050 (curbing dogs)
- f. Hollister Municipal Code §6.08.120 (dog licensing)
- g. Any violation of another jurisdiction's ordinance or regulation the content of which is consistent with the above Hollister Municipal Code sections.

4. Within the preceding twenty-four months, the owner has not received an order from Animal Control of the city of Hollister or another jurisdiction involving the dog for which the unaltered dog certification is sought, pursuant to:

- a. Hollister Municipal Code 6.08.100 (quarantine of biting dog) or another jurisdiction's ordinance or regulation the content of which is consistent with this Hollister Municipal code section.
- b. Any order issued pursuant to Chapter 6.13 (Dangerous Animals) or another jurisdictions' ordinance or regulation the content of which is consistent with this Hollister Municipal code section.

5. The dog for which the unaltered dog certification is sought has not been determined to be a "dangerous dog" pursuant to Chapter 6.13 of the Hollister Municipal Code or pursuant to another jurisdiction's dangerous dog ordinance or regulation.

6. The dog is properly housed and cared for as follows:

- a. The dog is provided sufficient quantity of good and wholesome food and water;
- b. The dog is provided shelter that will allow the animal to stand up, turn around, and lay down without laying in its feces;
- c. The area where the dog is kept is properly cleaned and disinfected;
- d. The dog must be fully contained on the owner's property and be provided appropriate exercise;
- e. The owner otherwise complies with any applicable state

law concerning the care and housing of dogs.

7. The owner furnishes the animal control supervisor with a signed statement agreeing to the following conditions:

- a. The female unaltered restricted dog will have no more than one litter per year, unless the owner furnishes the Animal Control supervisor in advance of any breeding a written statement from a licensed veterinarian recommending that the dog be allowed to have up to two litters per year;
- b. Offspring of the unaltered restricted dog will not be sold or adopted or transferred until they are at least eight (8) weeks of age;
- c. Records will be kept for three (3) years documenting how many offspring were produced and who adopted or purchased them.

8. The dog for which the unaltered dog certification is sought is currently licensed as required by Chapter 6.08 of the Hollister Municipal Code.

9. Payment of one-time unaltered dog registration fee.

B. Any person advertising to the public the availability of any dog subject to certification pursuant to this chapter, for adoption, sale, barter, or other transfer must prominently display the unaltered dog certification number in the advertisement. The certification number shall also be provided to any person adopting, purchasing, or accepting any dog subject to certification pursuant to this chapter.

C. Any owner of a restricted dog who is denied an unaltered dog certification or whose certification is revoked by the Animal Control supervisor for failure to comply with the requirements of this section may appeal such denial or revocation to a hearing officer appointed by the City, using the same procedures outlined in section 6.20.030.

### **Section 6.20.060 Penalties.**

The penalties for violations of any provision of this chapter are as follows:

A. First violation. A first violation may result in the Department impounding the restricted dog in accordance with section 6.20.060. A first violation shall be an infraction punishable by a fine not to exceed \$100. If the owner or custodian fails to correct the underlying cause of the violation within thirty (30) days after being notified of the violation, it shall be deemed a second violation.

Any owner of an unaltered restricted dog who has been cited for failing to obtain an unaltered dog certification shall have his or her citation dismissed if they are subsequently issued an unaltered animal certification, or if there is proof that the animal has been spayed or neutered within thirty days of the issuance of the citation.

B. Second violation. A violation within one (1) year of a first violation shall be deemed a second violation. A second violation is an infraction punishable by a fine not to exceed \$200.

C. Third or more violation. Each subsequent violation after the second within one (1) year shall be punishable as a misdemeanor.

### **Section 6.20.070 Impoundment of unaltered restricted dog.**

A. If an unaltered restricted dog is impounded, the owner or custodian may reclaim the unaltered restricted dog when one of the following occurs:

1. The dog is spayed or neutered by a Department veterinarian at the expense of the owner or custodian. A deposit shall be received prior to the procedure. Such expense may include additional fees due to extraordinary care required.

2. At the discretion of the Department, the restricted dog may be released to the owner or custodian if he/she signs a statement under penalty of perjury, representing that the dog will be spayed or neutered and that he/she will submit a statement within ten (10) days, signed by the veterinarian, confirming that the dog has been spayed or neutered. If the owner or custodian fails to comply with the terms or conditions of the statement, the Department shall have the right to impound the dog and the owner or custodian shall be charged with a second violation under Section 6.20.050.

3. The owner of the restricted dog obtains an unaltered dog certification.

4. During the pendency of any proceedings hereunder for the determination of breed.

B. Second incident of unaltered restricted dog running at large

The second time that an unaltered restricted dog is found to be running at large, or impounded for running at large, as that term is defined in Hollister Municipal Code section 6.08.010, the unaltered restricted dog shall be impounded,



and the owner shall be required to spay or neuter the restricted dog as provided in 6.20.060 (A).

C. Costs of impoundment.

1. The owner or custodian of the unaltered restricted dog shall be responsible for the costs of impoundment, including daily boarding costs if it is determined that the owner or custodian is in violation of Section 6.20.020.
2. The costs of impoundment shall be a lien on the dog, and the unaltered restricted dog shall not be returned to its owner or custodian until the costs are paid. If the owner or custodian of an impounded unaltered restricted dog does not pay the lien against the dog in full within fourteen (14) days, or any Department-approved extension of this deadline, the dog shall be deemed abandoned to the Department.

**Section 6.20.080 Allocation of fees and fines collected.**

All costs and fines collected under this chapter and the fees collected shall be paid to the Department for the purpose of defraying the cost of the implementation and enforcement of this chapter.

**Section 6.20.090 Relationship to Chapter 6.08.**

This chapter supplements the animal control regulations contained in Chapter 6.08 of the Hollister Municipal Code. To the extent that this chapter is in conflict with Chapter 6.08, this chapter shall control.

**Section 6.20.100 Severability.**

The provisions of this chapter are severable. If any section, paragraph, sentence, phrase, or word of this chapter is declared invalid for any reason by a court of competent jurisdiction, such invalidity shall not affect the validity of any other portion of this chapter, which shall remain in full force and effect.

**SECTION 3. PUBLICATION.** Within fifteen (15) days after passage, the City Clerk shall cause this ordinance to be published one time in the Free Lance, a newspaper of general circulation.

**SECTION 4. EFFECTIVE DATE.** This ordinance shall take effect (30) days after the adoption date.

**INTRODUCED** the \_\_\_ day of \_\_\_\_\_ 2010.

**PASSED AND ADOPTED** at a regular meeting of the City Council of the City of Hollister held on the \_\_\_\_\_ day of \_\_\_\_\_ 2010, by the following vote:

**AYES:**

**NOES:**

**ABSENT:**

**ABSTAINED:**

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Victor Gomez, Mayor

ATTEST:

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Geri Johnson, City Clerk

Approved as to Form:

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Stephanie Atigh, City Attorney