**ORDINANCE NO. 34-2020**

**OF THE GOVERNING BODY**

**OF THE BOROUGH OF BLOOMINGALE**

**AN ORDINANCE OF THE BOROUGH OF BLOOMINGDALE, IN THE COUNTY OF PASSAIC AND STATE OF NEW JERSEY, amending chapter 5 “ANIMAL CONTROL” of the Code of the Borough of Bloomingdale**

 **WHEREAS**, the Borough Code currently sets forth the animal control regulations, licensing requirements, fees, and restrictions and limitations with regard to the keeping of certain animals in the Borough; and

 **WHEREAS**, the Borough Ordinance Review Committee and Animal Control Officer have reviewed the Code and recommended certain changes be made to update the Code and for consistency and clarification purposes; and

**WHEREAS**, the Borough Attorney has reviewed the relevant provisions of Chapter 5 of the Borough’s Code and analyzed same, and has determined that multiple sections within Chapter 5 of the Borough’s Code need to be updated and amended to be consistent with New Jersey State law specifically set forth at N.J.S.A. 4:19-17 thru -37 of the New Jersey “Vicious and Potentially Dangerous Dogs Act”; and

 **WHEREAS**, the Borough Council has reviewed the recommendations of the Ordinance Review Committee, Animal Control Officer, and Borough Attorney, and agreed with the recommended changes.

 **NOW THEREFORE BE IT ORDAINED**, by the Mayor and Council of the Borough of Bloomingdale, in the County of Passaic, and State of New Jersey, as follows:

**SECTION 1.** The “Definitions” set forth at Chapter 5 “Animal Control”, Section 5-1 “Definitions shall be amended and revised to include the following definitions:

**ANIMAL**

Shall mean any cat, dog, livestock, or other domestic animal except poultry.

**DOG**

Shall mean any dog or dog hybrid.

 **OWNER’S PREMISES**

Shall mean and include the building or plot of land on which the building stands in which the owner of an animal has a place of abode or place of business in the Borough, but shall not include any areas of any building or plot of land shared in common with others (such as common areas and amenities and open space) or any areas of any building or plot of land in which the general public is invited or authorized to access.

**POTENTIALLY DANGEROUS DOG**

Shall mean any dog or dog hybrid declared potentially dangerous by a municipal court pursuant to section 7 of P.L. 1989, C. 307 (N.J.S.A. 4:19-23).

**VICIOUS AND POTENTIALLY DANGEROUS DOG ACT**

Shall mean and refer to Title 4, Chapter 19, Sections 17 thru 37 (N.J.S.A. 4:19-17 thru -37) of the New Jersey Statutes, as may from time-to-time be amended and supplemented in accordance with law.

**ANIMAL POSING A RISK TO PUBLIC SAFETY**

Shall mean any animal which at any time, without provocation, has attacked a human being or another domestic animal, either while upon or off the premises occupied by the person owning, keeping, harboring or having the custody or possession of the attacking animal. "Animal Posing A Risk to Public Safety" shall also mean and include any animal, including any dog, which is either reported to, or observed by, a certified Animal Control Officer: (1) to be ill or injured; (2) to have caused any human being engaged in a lawful activity or occupancy to be fearful for his/her own safety by chasing or snapping at such person without provocation; and/or (3) to otherwise create a threat to public health, safety or welfare, or interfere with the enjoyment of property. “Animal Posing A Risk to Public Safety ” shall not include any dog that is either: (a) deemed to be a “vicious dog” or “potentially dangerous dog” as defined under the “Vicious and Potentially Dangerous Dog Act”; or (b) seized and impounded by a certified Animal Control Officer upon finding that reasonable cause exists to seize and impound the dog under the circumstances set forth in the “Vicious and Potentially Dangerous Dog Act”.

**VICIOUS DOG**

Shall mean any dog or dog hybrid declared vicious by a municipal court pursuant to section 6 of P.L. 1989 c. 307 (N.J.S.A. 4:19-22).

All other portions of this Section remain unchanged.

**SECTION 2.** Chapter 5 “Animal Control”, Section 5-5 “Impounding” shall be amended to include the following additional subsections “e.” and “f.”:

e. Nothing herein shall be read or construed to limit the Animal Control Officer’s authority to seize and impound a dog in accordance with N.J.S.A. 4:19-19, when the Animal Control officer has reasonable cause to believe that the dog either: (1) attacked a person and caused death or serious bodily injury as defined in N.J.S.A. 2C:11-1(b) to that person; (2) caused bodily injury as defined in N.J.S.A. 2C:11-1(a) to a person during an unprovoked attack and poses a serious threat of harm to persons or domestic animals; (3) engaged in dog fighting activities as described in N.J.S.A. 4:22-24 and N.J.S.A. 4:22-26; or (4) has been trained, tormented, badgered, baited or encouraged to engage in unprovoked attacks upon persons or domestic animals. Under the above-listed circumstances, the dog shall be impounded until the final disposition as to whether the dog is vicious or potentially dangerous. Subject to the approval of the municipal health officer, or his or her authorized designee, the dog may be impounded in a facility or other structure agreeable to the owner.

f. Subsections “c.” and “d.” herein shall not apply to any dog seized and impounded by the Animal Control Officer under subsection “e.” above, and the Animal Control Officer shall instead proceed in accordance with the provisions of N.J.S.A. 4:19-20.

All other portions of this Section remain unchanged.

**SECTION 3.** Chapter 5 “Animal Control”, Section 5-6.4 “Violations and Penalties” shall be amended as follows:

Any person who is found in violation of any provisions of this section shall, upon conviction thereof, be punishable by a fine of $200 and/or imprisonment for a term not exceeding 90 days and/or by a period of community service not exceeding 180 days. A separate offense shall be deemed committed on each day upon which a violation occurs or continues.

All other portions of this Section remain unchanged.

**SECTION 4.** Chapter 5 “Animal Control”, Section 5-7 “Seizure of Animals” shall be amended as follows:

Any officer or agent authorized or empowered to perform any duty under this chapter is hereby authorized to go upon any premises to seize and impound any animal, including any Animal Posing a Risk to Public Safety, when such officer is in the immediate pursuit of such animal or animals except upon the premises of the owner of the animal if the owner is present and forbids the same. Nothing herein shall be read or construed to limit the authority of an Animal Control Officer to seize and impound a dog in accordance with the provisions of the “Vicious and Potentially Dangerous Dog Act,” N.J.S.A. 4:19-17 thru -37 and/or the provisions of N.J.S.A. 4:19-15.16.

All other portions of this Section remain unchanged.

**SECTION 5.** Chapter 5, “Animal Control”, Section 5-9, “Defiling or Damaging Property; Nuisances; Running at Large; Injury to Persons” shall be amended to include as revised subsection “e.” the following:

e. No person owning, keeping or harboring a dog shall permit or suffer the dog to cause any injury or damage to any person or other animals. If any dog has or may cause injury or damage to any person and/or other animal under circumstances in which the “Vicious and Potentially Dangerous Dog Act,” N.J.S.A. 4:19-17 thru -37 does not apply; the Animal Control Officer shall have the discretionary authority to enforce this section against the person owning, keeping or harboring any such dog that the Animal Control Officer has probable cause to believe is an Animal Posing a Risk to Public Safety. An Animal Posing a Risk to Public Safety is one that is running at-large while ill or injured; that has caused any human being engaged in a lawful activity or occupancy to be fearful for his/her own safety by chasing or snapping at such person; and/or has otherwise caused or created a threat to public health, safety or welfare, or interfered with the enjoyment of property as set forth within N.J.S.A. 4:19-15.16. However, the Animal Control Officer shall proceed in accordance with the provisions of the “Vicious and Potentially Dangerous Dog Act,” as incorporated by reference at Chapter 5, Section 10 herein, whenever the Animal Control Officer has reasonable cause believe that the dog either: (1) attacked a person and caused death or serious bodily injury as defined in N.J.S.A. 2C:11-1(b) to that person; (2) caused bodily injury as defined in N.J.S.A. 2C:11-1(a) to a person during an unprovoked attack and poses a serious threat of harm to persons or domestic animals; (3) engaged in dog fighting activities as described in N.J.S.A. 4:22-24 and N.J.S.A. 4:22-26; or (4) has been trained, tormented, badgered, baited or encouraged to engage in unprovoked attacks upon persons or domestic animals.

All other portions of this Section remain unchanged.

**SECTION 6.** Chapter 5 “Animal Control”, Section 5-10 “Vicious or Potentially Dangerous Dog”, shall be amended as follows:

N.J.S.A. 4:19-17 through 4:19-37 et seq., of the “Vicious and Potentially Dangerous Dog Act” and the amendments and supplements thereto are hereby adopted and incorporated by reference herein. Whenever a dog is declared a “vicious dog” or “potentially dangerous dog”, and all appeals pertaining thereto have been exhausted, the owner of the dog shall be liable to the Borough for the costs and expenses of impounding and euthanizing the dog in accordance with the schedule of these costs and expenses set forth at § 5-14 herein. The owner shall incur the expense of impounding the dog in a facility other than a municipal pound, regardless of whether the dog is ultimately found to be vicious or potentially dangerous.”

All other portions of this Section remain unchanged.

**SECTION 7.** Chapter 5 “Animal Control”, Section 5-16 “Violations and Penalties” shall be amended as follows:

1. Except with respect to any “vicious dog” or “potentially dangerous dog,” any person who violates or who fails or refuses to comply with the provisions of sections 5-9, 5-11, 5-12 and/or 5-15 of this chapter shall be subject to a fine of not less than $100. Second and third subsequent offenses shall be graduating, except that a fine shall not exceed $1,250.
2. The owner(s) and/or keeper(s) of a “vicious dog” and/or “potentially dangerous dog” who is found by clear and convincing evidence to have violated the “Vicious and Potentially Dangerous Dog Act,” N.J.S.A. 4:19-17 thru -37, or any rule or regulation adopted pursuant thereto, or to have failed to comply with a court’s order shall be subject to a fine of not more than $1,000 per day of the violation, and each day’s continuance of the violation shall constitute a separate and distinct violation. The municipal court shall have jurisdiction to enforce this section. An animal control officer is authorized to seize and impound any potentially dangerous dog whose owner fails to comply with the provisions of the “Vicious and Potentially Dangerous Dog Act,” N.J.S.A. 4:19-17 thru -37, or any rule or regulation adopted pursuant thereto or a courts order. The municipal court may order the dog so seized and impounded be euthanized in an expeditious and humane manner.”

All other portions of this Section remain unchanged.

**SECTION 8.** Chapter 5 “Animal Control”, Section 5-17.3 “Violations and Penalties” shall be amended as follows:

Any person violating any provisions of this section shall be subject to a fine of not less than $100 nor more than $1,000 and be subject to community service for not more than 90 days.

**SECTION 9.** All ordinances or parts of ordinances of the Borough of Bloomingdale inconsistent herewith are repealed to the extent of such inconsistency.

**SECTION 10.** If any section, subsection, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid by any court or competent jurisdiction, such decision shall not affect the remaining portion of this Ordinance.

**SECTION 11.** This law shall take effect immediately upon final passage, approval and publication as required by law.

 BOROUGH OF BLOOMINGDALE

 COUNTY OF PASSAIC

ATTEST: STATE OF NEW JERSEY

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Breeanna Calabro, Clerk JonathanDunleavy, Mayor