ORDINANCE NO. 2011-03

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF BROWARD COUNTY, FLORIDA, PERTAINING TO ANIMAL CARE AND REGULATION; AMENDING SECTION 4-2 TO DEFINE "DIVISION" AND "PROPER ENCLOSURE OF A DANGEROUS DOG;" AND TO AMEND THE DEFINITION OF "DANGEROUS DOG;" REWRITING SECTIONS 4-12 AND 4-12.5 FOR CLARITY AND CONFORMITY WITH STATE LAW; AMENDING SECTION 4-14.5 FOR CLARITY; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

(Sponsored by Commissioner Chip LaMarca)

WHEREAS, the Broward County Board of County Commissioners desires to amend its Animal Care and Regulation Ordinance to modify existing County regulation in connection with dangerous dogs.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF BROWARD COUNTY, FLORIDA:

Section 1. Section 4-2 of the Broward County Code of Ordinances is hereby amended to read as follows, with the definition contained in paragraph (k) below replacing the existing definition of the term "dangerous dog," and providing additional definitions for inclusion in Section 4-2, which section shall be re-lettered accordingly.

[UNDERLINING OMITTED]

Sec. 4-2. Definitions.

... 

(k) Dangerous Dog means any dog that according to the records of the Division:

Coding: Words in **struck-through** type are deletions from existing text. Words in *underscored* type are additions.
(1) Has aggressively bitten, attacked, endangered, or has inflicted severe injury on a human being on public or private property;

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

(3) Has been used primarily or in part for the purpose of dog fighting or is a dog trained for dog fighting; or

(4) Has, when unprovoked, chased, or approached a person upon the streets, 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 by the appropriate authority.

Notwithstanding anything else contained in this Chapter, a dog shall not be classified by the Division or a Hearing Officer as dangerous if the threat, injury, or damage sustained by a person was sustained at a time when the person was unlawfully on the property of the dog's owner, or while a person was lawfully on the property of the dog's owner but was tormenting, abusing, or assaulting the dog, its owner, or a family member or guest of the owner; or if the dog was protecting or defending a human being within the immediate vicinity of the dog from an unjustified attack or assault.

…

(aa) **Aggressive Dog** means any dog that, according to the records of the Division, has killed a domestic animal while unprovoked and off the owner's property.

(bb) **Division** shall mean the Broward County Permitting, Licensing, and Consumer Protection Division, Animal Care and Regulation Section.
(cc) Proper enclosure of a dangerous dog means while on the owner's property, a dangerous dog is securely confined indoors or in a securely enclosed and locked pen or structure, suitable to prevent the entry of young children and designed to prevent the animal from escaping. Such pen or structure shall have secure sides and a secure top to prevent the dog from escaping over, under, or through the structure and shall also provide protection from the elements.

... Sec. 4-11.5. Aggressive dog classification procedures, requirements, owner responsibilities, and penalties.

(a) Procedures to classify a dog aggressive. The investigation, initial determination, and hearing-related provisions contained in Section 4-12(a)(1)-(6) and Section 4-12.5, and the inspection rights contained in Section 4-12(d), shall be applicable to classifications of animals as aggressive dogs.

(b) Within fourteen (14) calendar days after a dog has been classified as aggressive or, if any appeal is filed, within fourteen (14) calendar days after such classification has been upheld in the appeal (dismissal of the appeal shall be deemed to uphold the classification), the owner of the aggressive dog shall comply with the following requirements and responsibilities:

1. The owner shall provide the Division with two (2) color photographs of the dog, (front view and side view) that clearly identify the dog. Each photograph shall be at least three (3) inches by three (3) inches.

2. The dog shall be spayed/neutered unless a licensed veterinarian has examined the dog and certifies, in writing (with a copy provided to the Division within such fourteen (14) day period), that at such time...
spaying/neutering the dog would endanger its health. Under that circumstance, the dog shall be spayed/neutered as soon as its health permits.

(3) Dogs classified as aggressive shall not be brought to a dog park or public park or public beach even if dogs are otherwise allowed.

(4) Dogs classified as aggressive shall not be brought to any commercial establishment other than a veterinary office or other facility where the dog is being treated.

(5) The owner shall register the dog as aggressive with the Division, and obtain an aggressive dog license which must be renewed annually. The fees for registration and licenses (including renewals) shall be as established by resolution.

(6) The owner must ensure that the dog, while on the owner’s property, is securely confined indoors or in a securely-fenced or enclosed area from which the dog may not escape (over, under, or through). The dog must be muzzled, leashed, and under the control of a person capable of controlling the dog whenever the dog is not within such securely-fenced or enclosed area or within the passenger portion of a vehicle.

(c) Each failure to comply with a requirement or responsibility contained in paragraph (b) immediately above shall constitute a noncriminal infraction punishable by a fine of $250 payable to the Division. The owner may contest the fine and citation as provided in Section 4-28.

Section 2. Section 4-12 of the Broward County Code of Ordinances is deleted in its entirety and replaced as follows:

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Sec. 4-12. Dangerous dog classification procedures, requirements, owner responsibilities, and penalties.

(a) Procedures to classify a dog dangerous.

(1) Investigation. The Division shall investigate reported incidents involving any dog whose actions may result in the dog being classified as dangerous. As part of the investigation, the Division shall, if possible, interview the dog's owner and require a sworn affidavit from any person, including any animal care officer or enforcement officer, who may have information relating to whether the dog might be dangerous.

(2) Initial Determination. Upon completing its investigation, the Division shall make an initial determination as to whether there is sufficient cause to classify the dog as dangerous. If the Division determines that there is sufficient cause, the Division shall provide written notification of its initial determination to the owner by registered mail, certified hand delivery (signed receipt), or service in conformance with the provisions of Chapter 48, Florida Statutes, as amended, relating to service of process.

(3) Availability of Hearing to Challenge the Initial Determination. The written notification referenced in paragraph (2) shall inform the owner that, notwithstanding any other provisions of this Chapter, if the owner wishes to challenge the initial determination, the owner must file a request for a hearing with the Division within seven (7) calendar days after the owner receives notice of the Division's initial determination.

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(4) **Effect of Not Timely Requesting Hearing.** If the owner fails to timely request a hearing pursuant to paragraph (3) above, the dog shall be classified as dangerous. The Division shall provide written notice of this classification to the owner by registered mail, certified hand delivery (signed receipt), or service in conformance with the provisions of Chapter 48, Florida Statutes, as amended, relating to service of process. The notice shall inform the owner that he or she may, within ten (10) business days after receipt of the notice, file a written request for a hearing in the County Court for the Seventeenth Judicial Circuit in and for Broward County to appeal the classification.

(5) **Effect of Timely Requesting Hearing.** If the owner timely requests a hearing pursuant to paragraph (3) above, the hearing shall be held no sooner than five (5) calendar days after filing of the request and no later than twenty-one (21) calendar days after the filing. The hearing shall be conducted in accordance with Section 4-12.5 below. If the Hearing Officer determines that the dog should be classified as dangerous, the Division shall provide written notice of such classification (along with a copy of the Hearing Officer's decision) to the owner by registered mail, certified hand delivery (signed receipt), or service in conformance with the provisions of Chapter 48, Florida Statutes, as amended, relating to service of process. The notice shall inform the owner that he or she may, within ten (10) business days after receipt of the notice, file a written request for a hearing in the County Court for the Seventeenth Judicial Circuit in and for Broward County to appeal the classification.
(6) **Confinement of Dog Pending Investigation, Hearing and Appeal.** During any investigation as to whether a dog is dangerous, and until the resolution of any subsequent hearing or appeal (as applicable), the owner of the dog, if allowed to maintain possession of the dog, must keep the dog in a securely fenced or enclosed area from which the dog may not escape (over, under, or through). The dog must be muzzled, leashed, and under the control of a person capable of controlling the dog whenever the dog is not within such securely fenced or enclosed area to prevent it from coming into contact with any person or domestic animal other than a person or domestic animal in the immediate household of the owner. The owner shall provide to the Division the address where the dog is kept. No dog that is the subject of a dangerous dog investigation may be relocated, nor may ownership of the dog be transferred, pending the outcome of an investigation or any hearing or appeal related to the determination of a dangerous dog classification.

Except for the prohibition on transferring ownership, the requirements in paragraph (6) are inapplicable while a dog is impounded by the Division.

(7) **Timing for Compliance with Dangerous Dog Requirements.** Within fourteen (14) calendar days after a dog has been classified as dangerous under paragraphs (4) or (5) above, or within fourteen (14) calendar days after such classification has been upheld in any appeal (dismissal of the appeal shall be deemed to uphold the classification), the owner of the dog must comply with all of the Dangerous Dog Requirements referenced in subpart (b) below. If the owner has not demonstrated full compliance with...
those requirements within such fourteen (14) day period, the Division may confiscate and impound the dog and subsequently dispose of the dog in a humane manner at the owner's expense.

(b) Dangerous Dog Requirements.

(1) Registration and Licensure. Any person who owns (or keeps, if a person other than the owner) a dangerous dog within Broward County must register the dog as dangerous with the Division and obtain a dangerous dog license. Any person who brings a dog into Broward County that has been declared dangerous by another jurisdiction, and who intends to reside in Broward County with such dog, shall register the dangerous dog and obtain a dangerous dog license within fourteen (14) calendar days of establishing residency in the county. The fees for registration and licenses shall be as established by resolution. Financial penalties as set by resolution shall be imposed if a dangerous dog is not timely registered and licensed. The Division may issue dangerous dog registrations, licenses, and license renewals only to owners at least eighteen (18) years of age.

(2) Conditions Precedent to Registration. No dangerous dog may be registered with the Division unless and until all of the following requirements have been met:

a. The owner shall, at the owner's expense, have the dangerous dog implanted with a Division-approved electronic animal identification device (microchip), and shall provide the Division with the microchip manufacturer and number. The owner may obtain microchips from

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the Division, if available, at the fee set by resolution. The microchip number will become the dangerous dog registration number.

b. The owner shall display a sign on his or her property warning that there is a dangerous dog on the premises. Said sign shall be clearly visible from all entry points and inform both children and adults of the presence of a dangerous dog on the property. The sign shall read "Dangerous Dog" or "Beware of Dog."

c. The owner of a dangerous dog must have in place, on the property where the dangerous dog will be kept, the proper enclosure of a dangerous dog as defined above in this Chapter.

d. The owner shall provide evidence of a current certificate of rabies vaccination for the dog.

e. The owner shall execute a document consenting to the Division entering the exterior of the owner's property, with or without prior notice, for the sole purpose of conducting inspections to ensure that the dog's owner is meeting his or her responsibilities, as applicable, under section (c) below.

f. The owner shall, at the owner's expense, have the dog evaluated by a credentialed animal behavior specialist, provide a copy of the written evaluation to the Division, and agree in writing to comply in full with all recommendations made by the specialist.

g. The owner shall be required to sign an agreement provided by the Division to pay the victim's documented, reasonable veterinary expenses and disposal costs, if applicable. The owner of the
dangerous dog shall deliver a check, payable to the victim, to the Division within fifteen (15) days after being provided with the documented, reasonable veterinary expenses and disposal costs.

(c) *Responsibilities of Dangerous Dog Owners.* The owner (or keeper, if other than the owner) of a dangerous dog shall:

(1) Renew the dangerous dog license annually. Failure to renew the dangerous dog license within thirty (30) calendar days after the expiration of the previous license shall result in the assessment of a late renewal penalty as set by resolution, and will subject the owner to citation for non-compliance with this Chapter. In the event a current dangerous dog license is lost, destroyed, misplaced, or otherwise missing, the owner must obtain a replacement dangerous dog license at the fee set by resolution.

(2) Ensure that the dog, while on the owner's property, is securely confined indoors, or securely confined in a proper enclosure of a dangerous dog as defined above. At any time that a dangerous dog is not so confined, the dog shall be muzzled and restrained in such a manner as to prevent it from biting or injuring any person or animal, and kept on a substantial chain or leash by a person able to exercise control over the dog. The muzzle must be made in a manner that will not cause injury to the dog or interfere with its vision or respiration but will prevent it from biting any person or animal. However, the foregoing requirements of this paragraph do not apply:
a. When the dog is in attendance at and participating in any dog show, contest, or exhibition not prohibited under Section 828.122, Florida Statutes, as amended, and sponsored by a dog club, association, society, or similar organization.

b. While the dog is being transported within the cab or passenger portion of any motor vehicle, provided the vehicle has a roof, and the dog cannot escape through an open window.

c. When the owner is exercising the dog in a securely fenced or enclosed area that does not have a top, provided that the dog remains within the owner's sight and only members of the immediate household or persons eighteen (18) years of age or older are allowed in the enclosed or fenced area when the dog is present.

(3) Notify the Division immediately if the dangerous dog becomes loose, unconfined, attacks, or bites a human being or another animal, dies, is sold, or is given away. In the event of the dog's death, the owner shall provide to the Division satisfactory evidence (as determined by the Division) of the dog's death. If the dangerous dog is sold or given away, the owner shall provide to the Division the name, address, and telephone number of the new owner of the dangerous dog. The new owner shall, within fourteen (14) calendar days after receiving the dog, execute a new document to be supplied by the Division, acknowledging that he or she is aware of the dangerous dog classification, and agreeing that the new owner shall comply with all of the requirements of this Chapter.
(4) Notify the Division immediately if the owner believes that the dangerous dog has been stolen. The owner must, concurrently with that notification, report the theft to the appropriate local law enforcement authority and provide the official police report to the Division.

(5) Notify the Division immediately if the owner moves to another address with the dangerous dog, which notification shall identify such address.

(6) Have the dangerous dog destroyed in a humane manner at his or her sole expense by the Division or a licensed veterinarian if the owner is unable or unwilling to comply with all applicable requirements and mandates contained in this Chapter.

(7) Be and remain in full compliance with all recommendations made by the animal behavior specialist referenced above in Subsection 4-12(b)(2)e.

(8) Meet the obligation under any agreement executed as referenced in Subsection 4-12(b)(2)e.

(d) The Division shall have the authority to make whatever inspections are deemed necessary to ensure that the provisions of this Chapter are complied with. The Division may impound a dangerous dog if the owner fails to comply in full with the dangerous dog mandates and responsibilities cited herein. A dangerous dog impounded on that basis may be redeemed by the owner upon the owner's full compliance therewith and payment of any boarding fees, impound fees, and other applicable fees established by resolution. If the owner does not comply with the dangerous dog mandates and responsibilities and redeem the dangerous dog within fourteen (14) days of the date the dog was impounded pursuant to the terms of this paragraph, the dog shall be destroyed in an expeditious and humane manner or the
Division, at its sole discretion, may release the dog to an animal rescue or animal welfare agency.

(e) The owner of a dangerous dog may surrender the dangerous dog to the Division if the owner is unable or unwilling to comply with the requirements of this Chapter.

(f) This Chapter shall not apply to dogs owned and used by a law enforcement agency.

(g) Violations of Dangerous Dog Requirements or Responsibilities of Dangerous Dog Owners. Each failure to comply with a dangerous dog requirement or responsibility of a dangerous dog owner contained in this Chapter shall constitute a noncriminal infraction, punishable by a fine of $500 payable to the Division. The owner may contest the fine and citation as provided in Section 4-28.

(h) Impoundment, Confiscation, and Destruction of Dangerous Dogs.

(1) In the event that any officer of the Division has sufficient cause to believe that a dog is dangerous and that the owner is unable or unwilling to securely confine the animal, the Division officer may, if deemed by such officer to be necessary to protect the public, impound the dog pending completion of any investigation, hearing, or appeal. An owner's refusal to surrender a dog for such impoundment shall constitute a violation of this Chapter.

(2) If a dog that has previously been classified as dangerous attacks or bites a person or a domestic animal without provocation, the Division shall immediately confiscate and impound the dog, and after written notice to the owner and expiration of ten (10) business days from the date the

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owner receives the notice, destroy such dangerous dog in an expeditious and humane manner. This ten (10) day time period shall allow the owner to request a hearing under Section 4-12.5.

(3) If a dog attacks and causes severe injury to or death of any human, the dog shall be immediately confiscated by the Division, placed in quarantine, if necessary, for the proper length of time, or otherwise impounded, and held for ten (10) business days after the owner is given written notice, and thereafter destroyed in an expeditious and humane manner. This ten (10) day time period shall allow the owner to request a hearing under Section 4-12.5.

(4) For any period of impoundment or quarantine referenced in paragraphs (1), (2), or (3) above, or referenced elsewhere in this Chapter, the owner shall be responsible for payment of all boarding costs and other fees associated therewith.

(5) Notice under Section (h) shall be effected by registered mail, certified hand delivery (signed receipt), or service in conformance with the provisions of Chapter 48, Florida Statutes, as amended, relating to service of process.

(6) If the owner requests a hearing or files an appeal under paragraph (2) or (3) above, the dog must be held by the Division, at the owner's expense, and may not be destroyed while the hearing or appeal is pending.

(i) If any owner or keeper of a dangerous dog is a minor, the parent or guardian of such minor shall be responsible for complying with the provisions of this Chapter.
Section 3. Section 4-12.5 of the Broward County Code of Ordinances is deleted in its entirety and replaced as follows:

[UNDERLINING OMITTED]

Sec. 4-12.5. Hearings.

(a) Hearing Officer. There is hereby created for the purposes of this Chapter the position of Hearing Officer. For purposes of all proceedings related to dangerous dogs, each Hearing Officer shall be a member in good standing of the Florida Bar.

(b) Burden of Proof. The Division shall bear the burden of establishing that a dog is dangerous by a preponderance of evidence. The owner shall bear the burden of establishing any factual or legal defense to the classification of dangerousness by a preponderance of evidence.

(c) Hearing Procedures.

(1) These procedures govern hearings before Hearing Officers as provided in this Chapter. Such hearings shall provide an opportunity for the owner to be heard. All hearings shall be conducted in accordance with the Florida Rules of Civil Procedure and the Florida Evidence Code, except as otherwise stated herein. However, the hearing shall be conducted in an informal manner to the extent practicable. Each party shall be afforded the following rights:

a. To be accompanied, represented, and advised by counsel;

b. To offer the testimony of witnesses and examine opposing witnesses on relevant matters; and

c. To present his or her case by oral or documentary evidence.
(2) Any interested person or entity may make application to intervene and appear at a hearing. Such application may be granted at the discretion of the Hearing Officer based on good cause shown.

(d) Subpoenas.

(1) The Hearing Officer shall have the power to issue subpoenas to compel the attendance of witnesses at a hearing upon the written request of any party or upon the Hearing Officer's own initiative.

(2) A subpoena may be served by any person authorized by law to serve process. Service shall be made as provided by law.

(3) Any person subject to a subpoena may, before compliance with the subpoena is required, petition the Hearing Officer to quash the subpoena.

(4) A party may seek enforcement of a subpoena issued by a Hearing Officer under the authority of this Chapter by filing a petition for enforcement of such subpoena in a court of competent jurisdiction.

(e) Evidence.

(1) In any hearing before a Hearing Officer, irrelevant, immaterial, or unduly repetitious evidence shall be excluded. All other evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs shall be admissible, whether such evidence would be admissible in a trial in the courts of Florida. Any part of the evidence may be received in written form, and all testimony of parties and witnesses shall be made under oath. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but it shall not be
sufficient in itself to support a finding unless it would be admissible over
objection in civil actions.

(2) A party shall be permitted to conduct cross-examination when testimony is
taken or documents are made a part of the record.

(3) The rules of privilege shall be effective to the same extent that they are
recognized under Florida law.

(4) The Hearing Officer shall ensure that a full record of the hearing is
preserved, which record shall be public and open to inspection and
transcription by any person.

(f) Written Determinations of the Hearing Officer.

(1) After conducting a hearing, the Hearing Officer shall issue a determination
within twenty (20) calendar days of the hearing.

(2) All determinations of the Hearing Officer shall be in writing, signed, and
dated by the Hearing Officer, shall contain findings of fact and conclusions
of law, and shall be served upon the owner by registered mail, certified
hand delivery (signed receipt), or service in conformance with the
provisions of Chapter 48, Florida Statutes, as amended, relating to service
of process.

(g) Obligation to Pay Hearing Officer's Fee; Deposit. The non-prevailing party
shall be responsible for paying the Hearing Officer's fee in full. When filing a written
request for a hearing, the owner shall provide a deposit in the amount established by
resolution as security for payment of the Hearing Officer's fee. If the owner prevails in
the hearing, the deposit shall be returned in full. If the owner does not prevail, and the
Hearing Officer's fee exceeds the deposit, the owner shall pay the difference within ten

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(10) days after written demand is made by the Division. If the owner does not prevail, and the deposit exceeds the Hearing Officer's fee, the Division shall return the excess deposit to the owner within ten (10) days after paying the Hearing Officer's fee.

(h) Once a hearing is scheduled, failure to appear before the Hearing Officer may, at the discretion of the Hearing Officer, result in dismissal of the hearing with prejudice, in which case the initial classification by the Division shall stand and the dog shall be classified as dangerous.

Section 4. Section 4-14.5 of the Broward County Code of Ordinances is hereby amended to delete paragraph (b) and re-letter existing paragraph (c) as the new paragraph (b).

Section 5. SEVERABILITY.

If any portion of this Ordinance is determined by any Court to be invalid, the invalid portion shall be stricken, and such striking shall not affect the validity of the remainder of this Ordinance. If any Court determines that this Ordinance, or any portion hereof, cannot be legally applied to any individual(s), group(s), entity(ies), property(ies), or circumstance(s), such determination shall not affect the applicability hereof to any other individual, group, entity, property, or circumstance.

Section 6. INCLUSION IN CODE.

It is the intention of the Board of County Commissioners that the provisions of this Ordinance shall become and be made a part of the Broward County Code; and that the sections of this Ordinance may be renumbered or relettered and the word "ordinance" may be changed to "section," "article," or such other appropriate word or phrase in order to accomplish such intentions.
Section 7. **EFFECTIVE DATE.**

This Ordinance shall become effective as provided by law.

ENACTED January 25, 2011

FILED WITH THE DEPARTMENT OF STATE February 10, 2011

EFFECTIVE February 10, 2011