

ORDINANCE NO. 3709

AN ORDINANCE REGULATING THE OWNERSHIP AND CONTROL OF ANIMALS IN THE CITY OF OSAWATOMIE BY AMENDING CHAPTER TWO OF THE MUNICIPAL CODE OF THE CITY OF OSAWATOMIE OF KANSAS.

WHEREAS, the City Council desires to create laws and regulations which eliminate the ban on certain breeds of dogs but continues to protect the health, safety and welfare of the City's residents; and

WHEREAS, the City Council desires to create an environment where dogs, and all animals, residing in the community are not a threat to the community or its residents; and

WHEREAS, a healthy and vibrant community includes standards for humane and proper care of animals which live among us and are part of our families; and

WHEREAS, it is the responsibility to protect the health and welfare of the animals residing in the community and to provide standards of care which will promote good pet ownership and proper socialization of all domesticated animals;

NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF OSAWATOMIE, KANSAS:

**Section 1.** Article 1 of Chapter 2 of the Code of the City of Osawatomie is hereby amended to read as follows:

**ARTICLE 1. GENERAL**

**2-101. DEFINITIONS.** For the purposes of this chapter, the following words and phrases shall mean:

(a) "Abandon" includes the leaving of an animal by its owner or other person responsible for its care or custody without making effective provisions for its proper care.

(b) "Animals" means all vertebrate and invertebrate animals such as but not limited to bovine cattle, horses and other equines, hogs, goats, dogs, cats, rabbits, sheep, chickens, ducks, geese, turkeys, pigeons, and other fowl or wild animals, reptiles, fish, bees or birds that have been tamed, domesticated or captivated.

(c) "Animal Shelter" means the facility or facilities operated by the city or its authorized agents for the purpose of impounding or caring for animals under the authority of this chapter or state law.

(d) "Assistance Dog" means a dog trained and certified, or undergoing training, to aid or assist a person with a disability and includes guide dogs for the visually impaired, hearing dogs for the deaf or hard of hearing, and service dogs for mobility assistance, seizure alert, therapy, or psychiatric service. The owner of an assistance dog must be able to provide adequate documentation, upon demand

of an animal control officer or law enforcement officer, that the service dog is an animal trained by an accredited institution which trains dogs for assistance work.

(e) “At-large” means to be outside of a fence or other enclosure which restrains the animals to a particular premise or not under the control, by leash or lead, of the owner or other authorized person capable of restraining the animal. Animals tethered to a stationary object within range of public thoroughfares are deemed to be at-large.

(1) Animals are not considered to be at-large if they are on the property of the owner and under the supervision or voice control of the owner.

(f) “Bite” means any actual or suspected abrasion, scratch, puncture, tear, bruise, or piercing of the skin, caused by any animal, which is actually or suspected of being contaminated or inoculated with the saliva from the animal, directly or indirectly, regardless of the health of the animal causing such bite.

(g) “Cat” means any member of the species felis catus, regardless of sex.

(h) “Dangerous Dog” means:

(1) Any dog with a known propensity, tendency or disposition to attack, to cause injury, or otherwise threaten the safety of human beings or domestic animals; or

(2) Any dog which in a vicious or threatening manner, approaches any person in apparent attack upon the person while on the streets, sidewalks, or any public grounds or places; or on private property; or

(3) Any dog which attacks or bites, or has attacked or bitten a human being or domestic animal; or

(4) Any dog owned or harbored primarily or in part for the purpose of dog fighting, or any dog trained for dog fighting.

(5) Notwithstanding the definition of a dangerous dog above in paragraphs (1) through (4) above:

(A) No dog may be declared dangerous if any injury or damage is sustained by a person or animal who at the time such injury or damage was sustained, was committing a willful trespass or other tort upon premises occupied by the owner or keeper of the dog, or was teasing, tormenting, abusing or assaulting the dog or was committing or attempting to commit a crime.

(B) No dog may be declared dangerous if the dog was protecting or defending a human being within the immediate vicinity of the dog from an unjustified attack or assault.

(C) No dog may be declared dangerous if the injury or damage was sustained by a rabbit, bird or fowl that was not in a fenced or enclosed area on its owner’s premises.

(D) Nothing in this article shall be deemed to regulate or prohibit the lawful maintenance of dogs by law enforcement agencies.

(i) “Dangerous or Vicious Animal” means:

(1) Any animal with a known propensity, tendency or disposition to attack unprovoked, to cause injury or to otherwise endanger the safety of human beings or domestic animals.

(2) Any animal which attacks a human being or domestic animal without provocation.

(3) Any animal which is urged by its owner or harbinger to attack, or whose owner or harbinger threatens to provoke such animal to attack, any law

enforcement officer while such officer is engaged in the performance of official duty.

(4) A rabid animal, either deemed to be rabid by the animal control officer or a law enforcement officer based upon an animal's physical appearance or actions, or an animal later determined to be rabid through testing or determination made by a licensed veterinarian.

(j) "Dog" means any member of the species *canis familiaris*, regardless of sex.

(k) "Exposed to Rabies" means an animal which has been bitten by or subjected to danger, attack or harm by any creature known to have been infected with rabies.

(l) "Fowl" means those animals in the zoological class *aves*, which can be generally defined as domestic birds commonly kept for the production of meat, eggs or feathers, which shall include, but not limited to, chickens, ducks, geese, swans, turkeys, pigeons, pea fowl, guinea fowl, ostriches and emus.

(m) "Harbor" means any person who shall allow any animals to habitually remain or lodge or to be fed within his or her home, store, yard, enclosure or place of business or any other premises where he or she resides or controls.

(n) "Humane Live Animal Trap" means any cage trap that upon activation encloses an animal without placing any physical restraint upon any part of the body of such animal.

(o) "Humanely euthanize" means the proper injection of a substance that quickly and painlessly terminates the life of an animal, or any other method approved by the American Veterinary Medical Association or the American Humane Society.

(p) "Immediate Control" means the regulation and supervision by a competent person so that an animal is unable to run or get loose at will.

(q) "Kennel" means any establishment, commercial or otherwise, maintained for breeding, rearing, grooming, boarding, or otherwise harboring in an enclosure in one location only, more than six dogs.

(r) "Livestock" includes, but is not limited to cattle, horses, goats, sheep or other animals commonly regarded or used as farm or ranch animals.

(s) "Neutered" means any male or female cat or dog that has been permanently rendered sterile.

(t) "Own" means and includes own, keep, harbor, shelter, manage, possess, or have a part interest in any animal. If a minor owns any such animal subject to the provisions of this chapter, the head of the household of which such minor is a member shall be deemed to own such animal for the purposes of this chapter.

(u) "Owner" means the one who owns, or his or her employee, agent, or other competent person into whose charge an animal has been placed by the actual owner as described in subsection (q) above.

(v) "Secure enclosure" means a fence or structure of at least six (6) feet in height, forming or causing an enclosure suitable to prevent the entry of young children and suitable to confine a dangerous dog. An enclosure shall be securely enclosed and locked and designed to prevent the animal from escaping from the enclosure. The secure enclosure must be at least six feet from any public sidewalk or street. The secure enclosure, other than a residence, must be locked with a key or combination lock when animals are within the enclosure. All secure enclosures

must comply with all zoning and building regulations of the city. All secure enclosures must provide such food, potable water, protection from the elements, opportunity for exercise adequate to maintain health, adequate light and ventilation, a clean and sanitary environment, and provide for other care as is needed for the health or well-being of the enclosed animal.

(w) “Secure six-sided enclosure” means a secure enclosure, such as a pen, kennel or structure with secure sides, a secure top attached to the sides and a secure bottom or floor attached to the sides of the pen, or if such enclosure has no bottom secured to the sides, the sides must be embedded into the ground no less than one (1) foot.

(x) “Service Animal” means dogs, or other animals, that are trained by an accredited institution to do work or perform tasks for people with disabilities and covered by the Americans with Disabilities Act (ADA). Examples of such work or tasks include guiding people who are blind, alerting people who are deaf, pulling a wheelchair, alerting and protecting a person who is having a seizure, reminding a person with mental illness to take prescribed medications, calming a person with Post Traumatic Stress Disorder (PTSD) during an anxiety attack, or performing other duties. Service animals are working animals, not pets. The work or task a dog, or animal, has been trained to provide must be directly related to the person’s disability. Animals whose sole function is to provide comfort or emotional support do not qualify as service animals under the ADA.

(1) Under the ADA, State and local governments, businesses, and nonprofit organizations that serve the public generally must allow service animals to accompany people with disabilities in all areas of the facility where the public is normally allowed to go.

(2) Under the ADA, service animals must be harnessed, leashed, or tethered, unless these devices interfere with the service animal’s work or the individual’s disability prevents using these devices.

(y) “Supervision” means within visual or auditory range of the owner.

(z) “Tether”, when used as a verb, shall mean fastening a dog or cat to a stationary object, pulley run line or a stake. When used as a noun, shall mean a chain, leash, rope, cable, chain, string, leather or nylon strap, or any other material used to fasten a dog or cat to a stationary object, pulley run line or a stake.

(aa) “Vaccination” means an injection of a vaccine, approved by the State Board of Public Health and administered by a licensed veterinarian for the purpose of immunizing an animal against rabies.

(bb) “Veterinarian” means a doctor of veterinary medicine licensed by the State of Kansas.

(cc) “Vicious” means a cross, ferocious or dangerous disposition or a habit, tendency or disposition to snap, attack or bite any person or domestic animal.

## **2-102 KEEPING ANIMALS.**

(a) Except as allowed by subsection (d) of this section, it shall be unlawful for any person to own, keep, maintain or have in his possession or under his control, within the city limits, any live mammal, bird or reptile.

(b) Except as allowed by subsection (d) of this section, it shall be unlawful for any person to willfully sell, offer for sale, trade or offer for trade, within the city limits, any live mammal, bird or reptile.

(c) Except as allowed by subsection (d) of this section, it shall be unlawful for any person to willfully buy or accept in trade, within the city limits, any live mammal, bird or reptile.

(d) Exceptions. Persons may buy, own, accept in trade, keep, maintain, possess, sell, offer for sale, trade or offer for trade:

- (1) Domestic dogs,
- (2) Domestic cats,
- (3) Domesticated rodents,
- (4) Domesticated European ferrets.
- (5) Rabbits, except that no more than three (3) rabbits over the age six months shall be permitted in or on a property that is residentially zoned.
- (6) Birds, except for species protected by state or federal law and fowl as defined in this chapter.
- (7) Nonvenomous snakes less than eight (8) feet in length, except that such snakes shall be required to be maintained on the owner's premises or property.
- (8) Nonvenomous lizards.
- (9) Turtles, except for species protected by state or federal law.
- (10) Amphibians.
- (11) Fish.
- (12) Invertebrates.
- (13) Domesticated Hedgehogs.
- (14) Service animals as defined in this chapter.

(e) Exceptions: The prohibitions in subsections (a) through (c) of this section shall not apply to:

(1) A bona fide zoo, as defined by the American Association of Zoological Parks and Association of Zoological Parks and Aquariums.

(2) A stockyard or sales barn for the loading, unloading, temporary detention and sale of such livestock, if the location of such stockyard or sales barn does not otherwise violate the zoning ordinances of the city;

(3) Livestock located on property that has been zoned for agricultural purposes or is property owned by the city which is being held in reserve for industrial purposes and has yet to be developed, where any such property is more than ten (10) acres in size; and the property is used solely for agricultural operations,

(i) Any such livestock shall be maintained on the property at a rate so that the property cannot be considered a confined animal feeding operation under the regulations of the State of Kansas.

(ii) Any residentially zoned property over ten (10) acres in size that legally maintained livestock on the property as of January 1, 2013 shall be allowed to continue the maintenance of livestock until such time that the current owner transfers the ownership of all or a portion of the property to a new owner, by sale, inheritance or other means, but under no circumstance shall the owner maintain more livestock on the property than were in existence on January 1, 2013 or than allowed under agricultural zoning regulations.

(4) A veterinary clinic operated by a licensed veterinarian.

(5) A person designated and licensed as an animal rehabilitator by the Kansas Wildlife and Parks Department.

(6) A bona fide medical institution or accredited educational institution.

(7) A carnival, circus, if properly licensed or approved by the city.

(8) A person or business exhibiting an animal for sale, show or other temporary purpose on public property as part of a community event that has been authorized by the city.

(9) A facility licensed by the Kansas Animal Health Department for the purpose of impounding, sheltering, or caring for animals and legally zoned or permitted within the City to operate such a facility.

(10) Any person, business or institution listed under this subsection (e) who are temporarily transporting such animals through the city by ordinary and customary means, except that circuses and carnivals need not be licensed by the city if merely temporarily transporting an otherwise prohibited animal through the city.

(f) Sanitary Requirements. All persons, businesses and institutions listed in subsections (d) and (e) of this section must ensure that all animals and animal quarters conform to the provisions of the nuisance ordinances of the city and are kept in a clean and sanitary condition and so maintained as to limit objectionable odors; and shall ensure that all animals are maintained in quarters which are adequately constructed so as to prevent their escape.

(g) Licensing. All persons and institutions listed in subsection (e) of this section must be properly licensed, if so required, by any rule or regulation promulgated under the authority of federal statute enacted by the United States, or by any statute enacted by the state, or by any rule or regulation promulgated by any agency or department as authorized by state statute.

(h) Violations.

(1) Any animal found in violation of the provisions of this article shall be subject to impoundment by the city and subsequent fees for such impoundment in accordance with Section 2-209 of this chapter.

(2) A violation of any provision of this section shall constitute a new and separate offense each calendar day the violation continues to exist.

(i) Destruction or Removal of Prohibited Animals. Upon conviction of a violation of this section, the judge of the municipal court of the city may order the owner, harbinger, keeper or possessor to destroy or remove from the city any animal prohibited under this section.

**2-103**

**INJURING OR KILLING OF WILD ANIMALS.**

(a) It shall be unlawful for any person to injure, kill, maim, molest, torture or destroy any wild or undomesticated animal in the city; provided, that upon complaint to the police department that any wild or undomesticated animal has caused or is causing damage or destruction of property upon any private premises in the city, such animal may be taken into custody and destroyed by a pest control firm or company; provided, however, that rats, mice, moles and like rodents infesting any private premises may be controlled and destroyed at any time without a permit.

(b) Notwithstanding the prohibition of subsection (a) of this section, it shall be lawful to kill wild or undomesticated deer or turkeys by bow and arrow provided the bow hunting is done on Kansas Department of Wildlife, Parks and Tourism

(KDWPT) owned or managed property.

**2-104 ANIMAL TRAPS.** It shall be unlawful for any person to use, place, set out, or deploy any animal trap aboveground, which makes use of a spring gun, spring jaws, clamping devices, cutting or stabbing mechanism or any other devices that will damage or severely injure any animal when caught or trapped by the device or trap; except that nothing herein contained shall prohibit the use of humane live animal traps that are so designed to trap and hold animals without injuring the animals.

(a) Individuals shall be required to regularly check such live animal traps so that the animal is not injured or neglected in a manner which would subject the person using, placing or deploying the trap would be subject to animal cruelty provision under Section 2-107 of this article.

(b) Nothing in this section shall be construed to prohibit the use of lethal traps for the control or removal of rats, mice, moles, like rodents or other pests infesting any private premises by a person or pest control company.

**2-105** *Reserved for future use.*

**2-106** *Reserved for future use.*

**2-107 CRUELTY TO ANIMALS.**

(a) It shall be unlawful for any person to:

(1) Willfully or maliciously kill, maim, disfigure, torture; beat with a stick, chain, club or other object; mutilate, poison, burn or scald with any substance; or otherwise cruelly set upon any animals, except that reasonable force may be employed to drive off vicious animals;

(2) Drive or work any animal cruelly or cruelly work any maimed, mutilated, infirm, sick or disabled animal, or cause, allow or permit the same to be done;

(3) Have, keep or harbor any animal which is infected with any dangerous or incurable and/or painfully crippling condition, unless under continuing veterinary care.

(4) Abandon or leave any animal in any place without ensuring provisions for its proper care;

(5) Have physical custody of any animal and fail to provide such food, potable water, protection from the elements, opportunity for exercise adequate to maintain health, or other care as is needed for the health or well-being of such animal;

(A) Food. Food shall be wholesome, free from contamination, and of sufficient quantity and nutritive value to maintain the animal(s) good health. Animals shall be fed at least once a day except as dictated by veterinary treatment, normal fasts or other accepted practices. All food receptacles shall be kept clean.

(B) Potable Water. Adequate fresh water shall be made available to animals on a regular basis.

(C) Protection from the Elements. Natural or artificial shelter appropriate to the local climatic conditions for the species concerned shall be provided for all animals kept outdoors to afford them protection and prevent

severe discomfort of such animals. When sunlight is likely to cause overheating, sufficient shade by natural or artificial means shall be provided to allow all animals kept outdoors to protect themselves from direct sunlight. Owners of animals kept outdoors or in an unheated enclosure shall provide the animal with the following minimum standards of shelter:

(i) It shall include a moisture proof and windproof structure of suitable size to accommodate the animal and allow retention of body heat and shall be made of durable material with a solid floor.

(ii) It shall be provided with a sufficient quantity of clean, suitable bedding material consisting of hay, straw, cedar shavings, or the equivalent, to promote insulation and protection against cold and dampness and promote retention of body heat.

(6) Tether a dog or cat in a manner that violates Section 2-110 of this chapter.

(7) Keeping or harboring an animal on property upon which no person resides in a manner that violates Section 2-111 of this chapter.

(8) Failure of any operator of a motor vehicle to report an injury or death of an animal struck by the operator's vehicle in the manner required in Section 2-112 of this chapter.

(9) Knowingly leave any animal confined in a vehicle, without the appropriate heat or air conditioning, for more than five minutes in extreme weather conditions, defined as more than 80 degrees Fahrenheit or less than 15 degrees Fahrenheit ambient air temperature, shall create a legal, rebuttable presumption of violation of this act; or to transport an animal in the trunk of a vehicle;

(10) Allow an animal to sustain injury as a result of being transported in the open bed of a truck unless said animal is restrained in a cage or on a leash that will prevent the animal from jumping from or falling off of a moving vehicle;

(11) Except a licensed veterinarian, to crop animal ears or dock animal tails;

(12) Use of a wire, pole, stick, rope or any other object to cause an equine to lose its balance or fall, for the purpose of sport or entertainment;

(13) Cause, instigate, stage, or train any animal to fight or permit any animal to fight any other animal or human; or

(14) Sell or offer for sale, barter, give away, or use as an advertising device or promotional display, living baby chicks, rabbits, ducklings or other fowl under two months of age in any quantity less than 12; or to sell, offer for sale, barter, give away, or display animals or fowls as specified in this section which have been dyed, colored or otherwise treated so as to impart to them an artificial or unnatural color; or give away any live animal, fish, reptile, or bird as a prize for, or as an inducement to enter a place of amusement, or offer such vertebrate as an incentive to enter into any business agreement where the offer was for the purpose of attracting trade. This subsection shall not be construed to prohibit the sale of animals or fowls as specified in this subsection, in proper facilities, by hatcheries or persons engaged in raising and selling such animals and fowls for recognized animal husbandry purposes;

(15) Cause, instigate, stage, or train any animal to fight or permit any animal to fight any other animal or human; or promote, stage, hold, manage, in

any way conduct any game, exhibition, contest or fight in which one or more animals are engaged for the purpose of injuring, killing, maiming, or destroying themselves, any other animal or any human;

(16) These provisions shall not apply to the exceptions sanctioned under Section 2-108.

**2-108 SAME; EXCEPTIONS.** The provisions of Section 2-107 shall not apply to:

(a) Normal or accepted veterinary or veterinary hospital practices or treatment of animals under active veterinary care;

(b) Bona fide experiments carried on by licensed research facilities;

(c) Killing, attempting to kill, trapping, catching or taking of any animal in accordance with the provisions of Chapter 32 or Chapter 47 of the Kansas Statutes Annotated;

(d) Rodeo practices accepted by the rodeo cowboys' association;

(e) The humane euthanization of an animal which is diseased or disabled beyond recovery for any useful purpose, or the humane euthanization of animals for population control, by an authorized agent such as a licensed veterinarian, at the request of the owner;

(f) The humane euthanization of an animal by the animal control officer, a public health officer or a law enforcement officer in the performance of his or her official duty;

(g) The humane euthanization an unclaimed animal after three full business days following the receipt of such animal at a municipal pound or an incorporated humane society shelter by the owner, operator or authorized agents of such establishments.

**2-109 PROCEDURES FOR CRUELTY TO ANIMALS; FINES.**

(a) Any animal control officer, public health officer, law enforcement officer or licensed veterinarian, may take into custody any animal, upon either private or public property, which clearly shows evidence of cruelty to animals, as defined in Section 2-107 of this chapter and subsections thereto. Such officer or veterinarian may inspect, care for or treat such animal or place such animal in the care of the City, a duly incorporated humane society or licensed veterinarian for treatment, boarding and other care or, if it appears, as determined by an officer of such humane society or by such veterinarian, that the animal is diseased or disabled beyond recovery for any useful purpose, the humane euthanization thereof.

(b) Expenses incurred for the care, treatment or boarding of any animal taken into custody pursuant to subsection (a) above pending prosecution of the owner or keeper of such animal for the crime of cruelty to animals as defined in this chapter shall be assessed to the owner or keeper as a cost of the case if the owner or keeper is adjudicated guilty of such crime.

(c) If a person is adjudicated guilty of the crime of cruelty to animals as defined in Section 2-107 of this chapter and the court determines that such animal owned or possessed by such person would be in the future subject to any cruelty to animals, such animal shall not be returned to or remain with such person. Such animal may be turned over to a duly incorporated humane society or licensed veterinarian for sale, adoption or other disposition.

(d) Unless the animal obtained pursuant to this Section is the evidentiary

subject of a pending prosecution, the owner or keeper of the animal shall have a maximum of twenty (20) days after the animal is taken into custody to obtain the animal from the City, veterinarian or a duly incorporated humane society having custody of the animal. The City shall notify the owner or keeper of the animal, if known or reasonably ascertainable. The failure of the owner or keeper to obtain custody of the animal in the time provided shall provide the authority for the Municipal Judge to declare that the animal be disposed of by the City, veterinarian or duly incorporated humane society by adoption or destruction.

(e) Violation of Section 2-107 shall be a municipal offense and upon conviction, the defendant shall be fined a minimum fine of \$100.00 and a maximum fine of \$1,000.00 per offense. The Municipal Judge shall not have authority to suspend the minimum fine. In addition, to the Municipal Judge shall have authority to sentence the convicted defendant to a maximum six (6) month sentence in jail.

(1) A municipal judge shall have authority as a condition of sentence or probation to enter an order that prohibits the convicted defendant from owning, keeping or being allowed to obtain a license in the city for any or specific animals for a period of time to be determined by such judge.

(2) In addition to the penalties provided in this section, the municipal court judge may order a person convicted of violation under this section to turn the animal involved over to a designated humane society. All such animals taken by the designated agency may be placed with another or more suitable person or destroyed humanely as soon thereafter as is conveniently possible.

**2-110 TETHERING OF DOGS AND CATS.** It shall be unlawful for any person to attach chains or other tethers, restraints or implements directly to a dog or cat without the proper use of a collar, harness, or other device designed for that purpose and made from a material that prevents injury to the animal. No person shall:

(a) Continuously tether a dog or cat for more than 1 hour without supervision.

(b) Use a tether or any assembly or attachments thereto to tether a dog or cat that shall weigh more than one-eighth of the animal's body weight, or due to weight, inhibit the free movement of the animal within the area tethered.

(c) Tether a dog or cat on a choke chain or in such a manner as to cause injury, strangulation, or entanglement of the dog on fences, trees, or other manmade or natural obstacles.

(d) Tether a dog or cat without access to shade when sunlight is likely to cause overheating, or appropriate shelter to provide insulation and protection against cold and dampness when the atmospheric temperature falls below 40 degrees Fahrenheit, or to tether a dog without securing its water supply so that it cannot be tipped over by the tether.

(e) Tether a dog or cat in an open area where it can be teased by persons or an open area that does not provide the dog or cat protection from attack by other animals.

(f) Tether a dog or cat in an area where bare earth is present and no steps have been taken to prevent the surface from becoming wet and muddy in the event of precipitation.

**2-111 KEEPING ANIMALS ON UNINHABITED PROPERTY.**

(a) It shall be unlawful for any person to confine, harbor, keep or maintain an animal on property uninhabited by humans within the city limits.

(b) The prohibition of this section shall not apply to:

(1) A bona fide zoo, as defined by the American Association of Zoological Parks and Association of Zoological Parks and Aquariums.

(2) A stockyard or sales barn for the loading, unloading, temporary detention and sale of such livestock, if the location of such stockyard or sales barn does not otherwise violate the zoning ordinances of the city;

(3) A veterinary clinic operated by a licensed veterinarian.

(4) A bona fide medical institution or accredited educational institution.

(5) A carnival, circus, if properly licensed or approved by the city.

(6) A facility licensed by the Kansas Animal Health Department for the purpose of impounding, sheltering, or caring for animals and legally zoned or permitted within the City to operate such a facility.

(7) Any person, business or organization engaged in the commercial business of buying, selling, training or boarding animals.

(8) Animals maintained on nonresidential commercial properties for security purposes.

(9) Livestock maintained on tracts of ten (10) acres that is zoned for agricultural use, or otherwise allowed pursuant to this chapter, and adequate food and water is available.

**2-112 VEHICULAR ACCIDENTS INVOLVING ANIMALS.** Any person who as the operator of a motor vehicle strikes any animal shall stop at once and shall immediately report such injury or death to the owner of such animal, or in the event that the owner cannot be ascertained, and located, the operator shall at once report the accident to the animal control officer or any law enforcement officer.

**2-113** *Reserved for future use.*

**2-114** *Reserved for future use.*

**2-115 NUISANCE; ANIMAL ACTIVITIES PROHIBITED.**

(a) It shall be unlawful for the owner of any animals to keep or maintain such animals in the city so as to constitute a nuisance. For the purpose of this section, nuisance is defined as:

(1) Any animal which molests or interferes with persons in the public right-of-way, including the riding of livestock on the public right of way or any other public property, unless as part of a community event that has been authorized by the city.

(2) Any animal which attacks or injures persons, or other domestic animals.

(3) Any animal which damages public or private property other than that of its owner.

(4) Any animal which scatters refuse that is bagged or otherwise contained.

(5) Any owner which allows by the nature of maintenance of property or by the number of animals on a property to create an offensive odor so as to be objectionable to surrounding residences.

(6) Any animal or owner which causes any condition which threatens or endangers the health or well- being of persons or other animals.

(7) Any owner which fails to confine a dog or cat in heat to a secure and sufficiently enclosed area.

(8) Any person who shall own on their premises, more than five dogs of more than six months of age, or more than five cats of more than six months of age, or more than five total of dogs, cats or ferrets, more than six months of age in any combination, unless such premises is licensed as a commercial kennel.

(b) If a summons is issued charging violation of this provision, a subpoena shall also be issued to the complainant to testify to the nuisance under oath.

**2-116 NOISY ANIMALS.** The keeping, or harboring of any animal which by loud, frequent and habitual barking, howling, yelping, mewing, roaring or screeching shall disturb the peace of any neighborhood is hereby prohibited. It shall be the duty of any person harboring or keeping such loud or noisy animal or animals to abate the condition, and if he or she fails to do so, the city may abate it by taking up, impounding and/or disposing of the animal at the expense of the owner.

**2-117 ANIMAL OWNER RESPONSIBLE FOR REMOVAL OF ANIMAL EXCREMENT.**

(a) It shall be unlawful for any person to appear with an animal upon the public right-of-way, within public places or upon the property of another, absent that person's consent, without some means for removal of excrement that may be deposited by the animal.

(b) It shall be unlawful for any person who is an owner or possessor of an animal in their care to fail to remove any excrement deposited by the animal upon any public or private property, other than the property of the owner of the animal.

(c) The provisions of this section shall not apply to persons who have a physical disability or visual impairment, who are using service dogs, and can provide adequate documentation, upon demand of an animal control officer or law enforcement officer, that the service dog is an animal trained by an accredited institution which trains dogs for service work for the physically disabled or visually impaired.

(d) Violation of this section shall be punished by a fine of not less than \$10.00, plus applicable court costs. The Municipal Judge shall have no authority to suspend the fine or any portion thereof.

**2-118** *Reserved for future use.*

**2-119** *Reserved for future use.*

**2-120 ANIMAL CONFINES; SHELTERS.**

(a) It shall be unlawful for any person to keep or maintain any animal in any yard, structure or area that is not clean, dry and sanitary, free from debris and offensive odors that annoy any neighbor, and devoid of rodents and vermin.

(b) Excrement shall be removed at least once each week from any animal shelter, pen or yard area where animals are kept, or more often if necessary to prevent or control odors, fly breeding, or rodent infestation. If excrement is stored on the premises by any animal owner, it shall be stored in adequate containers with fly-tight lids, and all such stored or accumulated wastes shall be disposed of at least once each week.

(c) All animal shelters, pens and yards shall be so located that adequate drainage is obtained, normal drying occurs, and standing water is not present.

(d) All animal shelters and board fences confining animals shall be maintained in good repair, and all animal shelters and board fences confining animals subject to residential and commercial classification shall be protected from deterioration by painting or comparable treatment.

(e) Barbed wire fences and electrically charged fences shall not be permitted for animal confines except on properties for which an agricultural classification permit is held or where the barbed wire fence or electrically charge fence is protected by an exterior fence.

(f) All premises on which animals are kept shall be subject to inspection by the animal control officer, duly authorized law enforcement officer, or public health official. If the officer or official determines from such inspection that the premises are not being maintained in a clean and sanitary manner, he or she shall notify the owner of the animals in writing to correct the sanitation deficiencies within 24 hours after notice is served on the owner. Any animal kept under any condition which could endanger the public or animal health or create a health nuisance may be impounded. Animals shall be released after fees are paid and cause for impoundment has been corrected.

**2-121 SAME; STOCKYARDS; COMMERCIAL HOLDING PENS.** Animal shelters owned or operated as a stockyard or commercial holding pen shall be adequately maintained and cleaned as often as is necessary, as determined by the health officer, to control fly breeding or to control other conditions adversely affecting the public health including the following:

(a) Collected fecal material and other solid organic waste shall be disposed of at a sanitary landfill, fertilizer processing plant, or by proper dispersal on land used for agricultural purposes.

(b) Grain or protein feed shall be stored in tightly covered rodent- proof metal containers or rodent-proof bins.

(c) Premises subject to the terms of this section shall be maintained free of rodent harborage and in accordance with sections 8-601:608 of this code.

(d) Wherever reasonable, use shall be made of anti-coagulant rodenticides for the control of rodents and organo-phosphorus insecticides for the control of flies or any other effective chemical means for the control of rodents and flies.

(e) Wherever reasonable, use shall be made of soil sterilants and herbicides or other effective means for the control of weeds and grass around structures and buildings.

(f) Enclosures including fences where animals such as horses, cows, sheep and goats are maintained shall be constructed in a manner, using dimension lumber materials, or other effective means to prevent such animals from breaking out or causing hazard to persons or property.

(g) The solid wastes accumulated from the cleaning of animal shelters and holding pens maintained by persons subject to a residential classification permit as herein provided shall be stored in metal containers, with tight-fitting metal lids, and all such stored or accumulated wastes shall be disposed of at least once each week.

(h) Holding lots, pens and floors of sheds and buildings where animals are held and which are maintained by persons subject to a commercial, industrial or agricultural classification permit according to the terms of this chapter shall be surfaced with concrete or asphaltic materials and that the drainage system of such surfaced areas shall include proper retaining walls and traps to control the waste from draining into watercourses and such drainage system shall be subject to the approval of the health officer. The health officer shall waive this standard for domestic animal holding operations where such animal holding is longer than 24 hours for any domestic animal involved or where dirt lots are more appropriate to the proper care of cattle, horses or sheep.

(i) Solid wastes accumulated from the cleaning of animal shelters and holding pens maintained by persons subject to a commercial, industrial or agricultural permit according to the terms of this chapter shall be stored on concrete slabs or other facilities, such as dirt lots on which is stockpiled manure with an exposed perimeter as approved by the health officer; provided that all solid waste shall be properly disposed of at least once each week or as may be approved by the health officer.

**2-122** *Reserved for future use.*

**2-123** *Reserved for future use.*

**2-124** **DEAD ANIMALS; REMOVAL OF DISPOSITION.**

(a) The animal control officer shall be responsible for the removal of all dead animals found within the city.

(b) All dead animals shall be removed by the owner or proprietor of the premises within 12 hours after the death of such animal. If not so removed, such animal shall be removed by the animal control officer, and the costs arising therefrom may be charged to the animal's owner or custodian or property owner or proprietor.

(c) Charges for dead animal removal as required in subsections (b) of this section are due and payable upon billing by the city's administration services department, but payment shall be made in advance of animal removal if reasonably possible. Unpaid bills shall become a lien against the property when certified and processed as provided by law. The animal control officer may refuse to collect dead animals from commercial establishments as provided in subsection (b) for failure to pay previous billings.

(d) On occupied property, the owner and/or tenant thereof shall provide easy access to the subject animal for purposes of its removal.

(e) On-site burial of licensed animals shall be allowed on residential property which is owned and occupied by the resident, for domestic animals approved under Section 2-102(d) of this chapter, under 80 pounds in weight, and owned and licensed by the property owner prior to the animal's death.

**Section 2.** Article 2 of Chapter 2 of the Code of the City of Osawatomie is hereby amended to read as follows:

**ARTICLE 2. ANIMAL CONTROL OFFICER AND MUNICIPAL POUND**

**2-201 ANIMAL CONTROL OFFICER; DUTY TO IMPOUND; CITATION ALTERNATIVE.**

(a) There is hereby created the position of animal control officer for the city and such officer shall be charged with the enforcement of this chapter. Any person employed by the city as an animal control officer and commissioned by the chief of police of the city shall have such powers and authority as allowed by law in the enforcement of this chapter. All animal control officers shall be subject to the supervision and direction of the chief of police of the city.

(b) Except as provided in subsection (c), it shall be the duty of the animal control officer to take up and impound all animals found in the city in violation of the provisions of this chapter.

(c) As an alternative to the provisions of subsection (b) of this section, any law enforcement officer or the animal control officer may issue a citation to the owner, harborer or keeper of an animal in violation of this chapter, and the person receiving the citation shall, within twenty (20) days, appear in the municipal court of the city to answer the charged violation of this chapter.

**2-202 SAME; CAPTURE/DESTRUCTION.** When deemed necessary by law enforcement officers or the animal control officer for the health, safety and welfare of the residents of the city, such officers and/or their agents may:

(a) Place a humane trap on public or a requesting resident's property for the purpose of capturing any animal defined in this chapter as creating a nuisance in the city;

(b) Use any tranquilizer guns, humane traps, or other suitable devices to subdue and capture any animal that is deemed by the animal control officer, in his or her discretion, to be of a danger to itself or to the public health and safety.

(c) Use firearms or other suitable weapons to destroy any rabid animal, any animal deemed a threat to public safety as defined in Section 2-404, or any animal creating a nuisance as defined in Section 2-115, where such animal is impossible or impractical to catch, capture or tranquilize.

**2-203 SAME; RIGHT OF ENTRY; UNLAWFUL INTERFERENCE.**

(a) The animal control officer or any law enforcement officer shall have the right of entry upon any private lots or lands for the purpose of collecting any animal whose presence thereupon is a violation of this chapter.

(b) It shall be unlawful for any person to interfere with the animal control officer in the exercise of his or her duties.

**2-204 *Reserved for future use.***

**2-205 MUNICIPAL POUND ESTABLISHED.** A municipal pound shall be established to carry out the provisions of this chapter. Such a pound may be operated by a contractor and all services required herein may be provided by a contractor. When so contracted, the pound shall have the following services and facilities as a minimum:

(a) Adequate pickup and impounding of all stray and ownerless dogs and cats and animals otherwise in violation of the provisions of this chapter.

(b) Group holding facilities for stray, ownerless and unvaccinated animals impounded for violation of the provisions of this chapter.

(c) Individual isolation facilities for sick, biting, rabid and suspected rabid animals.

(d) Facilities for the humane destruction of animals.

**2-206 BREAKING POUND.**

(a) It shall be unlawful for any unauthorized person to open, unlock, break open or attempt to break open the pound, or to take or let out any animal placed therein, or take or attempt to take from an authorized officer of this city any animal taken up by him or her under the provisions of this chapter, or in any manner interfere with or hinder any authorized officer or employee of this city in catching, taking up, or impounding any animal.

(b) It shall be unlawful for any person or persons, other than those duly authorized, to care for, feed, attempt to feed, or interfere in any way with the care of impounded animals.

**2-207** *Reserved for future use.*

**2-208** *Reserved for future use.*

**2-209 IMPOUNDMENT; FEE; NOTICE; RECORD.**

(a) The animal control officer or law enforcement officer shall impound any animal or fowl found at large in the city or constituting a nuisance or otherwise in violation of this chapter in a suitable pound or enclosure provided or contracted for by the city. The impounding officer shall make diligent inquiry as to the owner of the animal and shall notify the owner thereof of such impoundment as soon as reasonably possible.

(b) Any animal, licensed or unlicensed, as required in this article may be claimed by its owner upon payment to the City of a pickup fee and boarding fee, or any other costs associated with the impoundment of the animal.

(c) Fees.

(1) Boarding Fee: A fee for maintaining and caring for the animal shall be established in the City's annual fee resolution.

(2) Pickup Fee: The fee for picking up, transporting or placing the animal in the municipal pound, regardless of the issuance of a citation, which shall be established in the City's annual fee resolution.

(3) Vaccination Deposit: A deposit shall be established in the City's annual fee resolution for rabies vaccination, redeemable when proof of vaccination is received from any veterinarian approved by the city. The deposit shall be forfeited if proof of vaccination is not received by the city's

administrative services department within five consecutive business days commencing the day following the making of the deposit. An absence of proof of vaccination shall be deemed evidence that no rabies vaccination has been obtained.

(d) The city shall attempt to recover all costs incurred in caring for any animal impounded or held pursuant to the provisions of this article, including but not limited to the cost for necessary veterinarian care. The fees shall be in addition to any fine impounded for violation of the provisions of this article.

(e) All animals impounded for reasons or suspected disease may be reclaimed by their owners upon evaluation, treatment and approval by a licensed veterinarian approved by the city.

(f) In case the identity of the owner of the impounded animal or fowl cannot be ascertained, the animal control officer or police officer shall, upon taking any such animal into custody and impounding the same, make a record thereof, with a description of the animal and the date and place taken into custody and the place of impounding and that unless the charges of impounding the same, together with any license fees due and unpaid, are paid within three business days from the date of the notice, that the animal will be disposed of as provided in this code.

**2-210 REDEMPTION OF IMPOUNDED ANIMALS.** At any time before the sale or destruction of any animal impounded under the provisions of this article, except for animals impounded as a dangerous, rabid, or for protection from cruelty under this chapter, the owner thereof may redeem the animal by paying the animal control officer or any person in charge, any established fees and all costs incurred as a result of such impoundment.

**2-211** *Reserved for future use.*

**2-212 GENERAL POLICY REGARDING ADOPTION.** The city's main concerns with respect to adoption of a cat or dog from the shelter are:

(a) That the dog or cat be in good health, that all dogs be immunized against rabies, licensed, not vicious by nature; and

(b) That the dog or cat will be provided of a good home under the control of a responsible person.

**2-213 SAME; DOGS.**

(a) Qualifications for adoption:

(1) Good health.

(2) Not vicious.

(3) Immunized.

(4) Licensed (when place of residence is within the city).

(5) In the case of a licensed dog turned in at the shelter by the owner or record or his or her authorized representative, the owner or representative must give a release in writing for the animal's disposal or adoption.

(6) In the case of a licensed dog picked up by the animal control officer as a stray or while running at large, or in response to a complaint, the dog will not be available for adoption (other qualifications being met) until the prescribed waiting period of seven (7) days has expired and the owner of record has failed to

claim it; or the owner has given written consent to the adopter for its adoption; or the adopter (after the waiting period) certifies that his or her efforts to locate the owner were unsuccessful.

(7) In the case of an unlicensed dog picked up by the animal control officer as a stray or while running at large, or in response to a complaint, the dog will not be available for adoption (other qualifications being met) until the prescribed waiting period of three days has expired and the owner has failed to claim it.

(b) Fees associated with adoption: The adopter will be required to pay the following fees to a City employee at City Hall.

(1) A license fee equal to the amount described in Section 2-301. Such fee shall be collected even if the adopter is a nonresident.

(2) An adoption fee set annually by the governing body.

**2-214 SAME; CATS.**

(a) Qualifications for adoption:

(1) Good health.

(2) Not vicious.

(3) Immunized.

(4) Licensed.

(5) In the case of a cat turned in at the shelter by its owner or its authorized representative, the owner or representative must give a release in writing for the animal's disposal or adoption.

(6) In the case of a cat suitable for adoption which is picked up by the animal control officer, or brought in by any other person not the owner, the cat will not be available for adoption until expiration of a waiting period of seven days, during which time its owner may claim it.

(b) Fees associated with adoption: The adopter will be required to pay the following fees to a City employee at City Hall.

(1) A license fee equal to the amount described in Section 2-301. Such fee shall be collected even if the adopter is a nonresident.

(2) An adoption fee set annually by the governing body.

**2-215 SAME; HOLDING ANIMAL IN SHELTER.** An animal considered by the animal control officer to be suitable for adoption may be held in the shelter for at least seven calendar days following the mandatory retention period if not claimed by the owner during the retention period. The animal control officer may hold the animal in the shelter beyond seven days if there is sufficient capacity and ability to do so.

**Section 3.** Article 3 of Chapter 2 of the Code of the City of Osawatomie is hereby amended to read as follows:

**ARTICLE 3. LICENSING AND HEALTH OF DOMESTICATED ANIMALS**

**2-301 IMMUNIZATION AND LICENSING OF DOGS, CATS AND FERRETS.**

(a) No person shall own any dog, cat or ferret, six (6) months of age or older, within the city limits if such animal is not currently vaccinated against

rabies.

(b) Any person owning, keeping, harboring, or having custody of any dog, cat or ferret, three (3) months of age or older within the city must register and obtain a license as herein provided. Application for a license must be made within 30 days after obtaining a dog, cat or ferret over three months, except that this requirement will not apply to a non-resident keeping a dog, cat or ferret within the city for no longer than 60 days.

(1) Any person owning a dog within the City shall cause such dog to wear a collar or harness at all times when off the premises of the owner to which shall be attached a current tag reflecting that the dog is vaccinated against rabies. The tag shall be situated on the collar or harness in such a manner that it may be easily visible at all times.

(2) Owners of cats and ferrets shall retain proof of current rabies vaccination on their person or premises.

(c) Registration and licensing of animals in the city shall require the following:

(1) Registration and application for licenses shall be made to the city clerk or other authorized person and shall include name and address of applicant, description of the animal and the appropriate fee.

(A) The city shall maintain a record of the identifying numbers of all tags issued and shall make this record available to the public.

(2) Upon registration, the owner shall present a current, completed certificate of immunization against rabies. No registration shall follow without evidence of this document, and it shall be unlawful for the owner of any such animal over three months of age to fail to maintain effective rabies immunization of such dog.

(3) The owner of any such animal shall, at the time of registration, present to the city clerk a certificate from an accredited veterinarian showing that the animal to be licensed has been neutered or spayed, if the animal has been neutered or spayed.

(4) The city clerk shall collect an annual registration fee for each animal. The registration fee shall be set annually by the governing body in its annual fee resolution.

(5) The registration year shall be from January 1st through December 31st of each year. The fee shall be payable before March 1st of each year without penalty. The owner of such animals who shall fail to register the same prior to the 1st day of March of each year shall pay in addition to the registration fee herein provided a penalty fee for late registration.

(6) Upon acceptance of the license application and fee, the city shall issue a durable tag or identification collar, stamped with an identifying number and the year of issuance. Tags should be designed so that they may be conveniently fastened or riveted to the animal's collar or harness.

(A) A duplicate license may be obtained upon payment of a replacement fee as may be set by the city council in the annual fee resolution.

(B) It shall be unlawful for any person to place on any dog a tag issued for any other dog or to make or use any false, forged or counterfeited tag or imitation thereof.

(C) No person may use any license for any animal other than the

animal for which it was issued.

(d) Registration fees may be prorated for newly acquired animals required to be licensed and owned by a person or persons moving to and establishing a home in the city during a calendar year.

(1) Although a license is required, license fees shall not be required for assistance dogs or governmental police dogs.

**2-302 LICENSE AND PERMIT ISSUANCE AND REVOCATION.** Provisions relating to the issuance of licenses and permits and revocation of same shall be as follows:

(a) The city may revoke any permit or license if the person holding the permit or license refuses or fails to comply with this article, the regulations promulgated by the city, or any law governing the protection and keeping of animals.

(b) Any person whose permit or license is revoked shall, within 10 days thereafter, humanely dispose of all animals owned, kept, or harbored by such person and no part of the permit or license fee shall be refunded.

(c) It shall be a condition of the issuance of any permit or license that the city shall be permitted to inspect all animals and the premises where animals are kept at any time and shall, if permission for such inspections is refused, revoke the permit or license of the refusing owner.

(d) If the applicant has withheld or falsified any information on the application, the city shall refuse to issue a permit or license.

(e) The city may refuse to issue a permit or license, or to revoke such permit or license, if the owner is subject to a judicial order from any jurisdiction prohibiting the owning of all or certain animals.

(f) No person who has been convicted of cruelty to animals shall be issued a permit or license to operate a commercial animal establishment.

(g) Any person having been denied a license or permit may not reapply for a period of 90 days

**2-303** *Reserved for future use.*

**2-304** *Reserved for future use.*

**2-305 ANIMALS AT LARGE; FINES.**

(a) It shall be unlawful for any person to own or keep a dog or cat or other animal which runs at large in the City. Knowledge or acquiescence by the owner or keeper is not an element of the offense. Any animal or found at large shall be impounded as provided in this chapter.

(b) An animal shall not be deemed to be running at large if:

(1) The animal is firmly attached to a leash or chain under the physical control of its owner or keeper

(2) The animal is within a structure or within a fence enclosure with the permission of the owner or keeper of the structure or fence enclosure

(3) The animal has an operating electronic collar and is under the charge, care or control, of its owner or keeper who is operating an electronic pet containment system or electronic training system for the animal.

(4) The animal is a dog and, under the supervision of its owner or keeper, is using the City's off-leash dog park in accordance with the City's rules and regulations for any City off-leash dog parks.

(c) Any animal on property without the permission of the property owner shall be deemed to be an animal at large and the owner of such animal shall be in violation of this Section.

(d) The provisions of this Section shall not apply to persons who are the owners of assistance dogs, as defined in this chapter.

(e) Any person found guilty of animal at large as defined herein shall be fined as follows: \$30.00 for the first offense within a twelve (12) month period; \$40.00 for the second offense within a twelve (12) month period; \$60.00 for the third offense within a twelve (12) month period; and \$100.00 for the fourth and subsequent offense(s) within a twelve (12) month period. The Municipal Judge shall have no authority to suspend the fine or any portion thereof of fine established by this Section. The fine shall be in addition to any applicable court costs or impoundment fees. The animal control officer, other City employee, or employees or custodians of an impoundment facility where such impounded is held shall not release an animal to an owner if the owner has failed to pay a fine or has failed to appear in municipal court for the adjudication of a violation of this section.

**2-306 HABITUAL VIOLATOR; ANIMAL AT LARGE.**

(a) It shall be a separate municipal offense for any person to receive four (4) or more citations for violation of Section 2-305 within a twenty-four (24) month consecutive period. Such person shall be cited as a habitual violator. Any person found guilty of violation of this Section shall be fined a minimum of \$100.00 and a maximum of \$500.00 for each habitual violator citation. The Municipal Judge shall have no authority to suspend the minimum fine or any portion thereof.

(b) A person cited for violation of this Section shall be required to appear in municipal court. In addition thereto, the Municipal Judge shall have the authority to sentence the individual to up to six (6) months in jail. It shall be a defense to an alleged violation of this Section for the defendant to have been adjudged not guilty, or the charge dismissed, of Section 2-305 for a specific citation issued under Section 2-305.

**2-307 AGGRESSIVE ANIMAL AT LARGE DEFINED; PENALTIES**

(a) An "aggressive animal at large" means any animal at large that without provocation, exhibits aggression or combativeness toward a person or another domestic animal, whether or not said person or animal is attacked, bitten, or scratched by the aggressive animal at large.

(b) Any person found guilty of animal at large as defined in Section 2-305, where such animal is an aggressive animal shall be fined as follows: \$50.00 for the first offense within a twelve (12) month period, or by imprisonment, for not more than 10 days, or by both such fine and imprisonment; \$75.00 for the second offense within a twelve (12) month period, or by imprisonment, for not more than 10 days, or by both such fine and imprisonment; \$100.00 for the third offense within a twelve (12) month period, or by imprisonment, for not more than 14 days, or by both such fine and imprisonment; and \$150.00 for the fourth and subsequent

offense(s) within a twelve (12) month period, or by imprisonment, for not more than 30 days, or by both such fine and imprisonment. The Municipal Judge shall have no authority to suspend the fine or any portion thereof of the fine established by this Section but shall have the authority to suspend the term of imprisonment. The fine shall be in addition to any applicable court costs or impoundment fees. The animal control officer, other City employee, or employees or custodians of an impoundment facility where such impounded is held shall not release an animal to an owner if the owner has failed to pay a fine or has failed to appear in municipal court for the adjudication of a violation of this section.

**2-308 HABITUAL VIOLATOR; AGGRESSIVE ANIMAL AT LARGE.**

(a) It shall be a separate municipal offense for any person to receive four (4) or more citations for violation of Section 2-307 within a twenty-four (24) month consecutive period. Such person shall be cited as a habitual violator. Any person found guilty of violation of this Section shall be fined a minimum of \$100.00 and a maximum of \$500.00 for each habitual violator citation. The Municipal Judge shall have no authority to suspend the minimum fine or any portion thereof.

(b) A person cited for violation of this Section shall be required to appear in municipal court. In addition thereto, the Municipal Judge shall have the authority to sentence the individual to up to six (6) months in jail. It shall be a defense to an alleged violation of this Section for the defendant to have been adjudged not guilty, or the charge dismissed, of Section 2-307 for a specific citation issued under Section 2-307.

**2-309** *Reserved for future use.*

**2-310** *Reserved for future use.*

**2-311** *Reserved for future use.*

**2-312** *Reserved for future use.*

**2-313** *Reserved for future use.*

**2-314 KENNEL LICENSES.**

(a) No person or household shall own or harbor more than five dogs of six months of age or older or more than one litter of pups, or more than five cats of more than six months of age or more than one litter of kittens, or more than a total of five dogs, cats or ferrets more than six months of age in any combination, or engage in the commercial business of breeding, buying, selling, trading, training, or boarding cats, dogs or ferrets or both cats, dogs and ferrets, without having obtained a kennel license from the city clerk.

(b) Kennel licenses must be renewed annually. No kennel license shall be issued until an inspection certificate has been issued by the animal control officer certifying approval of the kennel and compliance with the applicable laws of the city and the State of Kansas, and a certificate by the zoning code enforcement officer has been issued certifying that the applicant for the kennel license is not violating zoning laws of the city. If the city clerk has not received any protest

against the kennel, the city clerk may issue a renewal of an existing kennel license at the same location without any report from the animal control officer and zoning code enforcement officer. If the animal control officer or the zoning code enforcement officer finds that the holder of any kennel license is violating any zoning law, or any other law of the State of Kansas, or of the city, or is maintaining the facility in a manner detrimental to the health, safety or peace of mind of any person residing in the immediate vicinity, he or she shall report such fact to the city clerk, and the license shall not be renewed except after a public hearing before the governing body.

(c) The animal control officer, the zoning enforcement officer, or any law enforcement officer shall have the right to inspect any premises licensed under this section at any reasonable time and nothing shall prevent the entry onto private property for the purpose of inspection. The application for a kennel shall constitute consent to such entry and inspection.

(d) The governing body may suspend or revoke a kennel license if, pursuant to a public hearing, it finds any of the following:

(1) The kennel is maintained in violation of any applicable law of the State of Kansas, or of the city.

(2) The kennel is maintained so as to be a public nuisance.

(3) The kennel is maintained so as to be detrimental to the health, safety or peace.

(e) The annual kennel license fee shall be set by the governing body in its annual fee resolution. Payment of such license fee is in addition to, and not in lieu of, the dog license fees otherwise required under this chapter.

(f) This section shall not apply to and will not be construed to require a kennel license for a licensed veterinarian to operate an animal hospital.

## **2-315 GENERAL PENALTIES.**

(a) Unless otherwise specified by any section of this chapter for a specific violation, any person violating or permitting the violation of any provision of this chapter shall, upon conviction, be fined a sum not less than \$50 nor more than \$500.00. In addition to the fine imposed, the court may sentence the defendant to imprisonment in the county jail for a period not to exceed 30 days.

(b) Should a person refuse to remove an animal found to unlawfully be in the city, the court shall find the owner of the animal in contempt and order the immediate confiscation and impoundment of the animal. Each day that a violation of this article continues shall be deemed a separate offense.

(c) In addition to the foregoing penalties, any person who violates this chapter shall pay all expenses, including those relating to shelter, food, handling, veterinary care, witness fees and court costs necessitated by the enforcement of this chapter.

**Section 4.** There is hereby created a new Article 4 of Chapter 2 of the Code of the City of Osawatomie to read as follows:

### **ARTICLE 4. DANGEROUS ANIMALS**

**2-401           PROCEDURE FOR DETERMINATION OF A DANGEROUS DOGS**

(a) In the event that an animal control officer or law enforcement officer has probable cause to believe that a dog is dangerous, as defined by Section 2-101, the municipal judge shall be empowered to convene a hearing for the purpose of determining whether or not the dog in question should be declared dangerous as defined by Section 2-101. The animal control officer or law enforcement officer may order the dog to be impounded at the municipal pound, a licensed veterinary clinic or duly incorporated humane society pending the determination of whether the dog is dangerous. The owner or keeper of the dog shall be liable for the costs of keeping such dog.

(1) Dogs seized in connection with dog fighting or that have caused a severe or fatal injury to a human shall be housed in a secure enclosure with proper exercise and care and held as evidence in the case until the conclusion of the case and order from the court on the disposition of the dogs. Disposition and release of dogs is determined in accordance to K.S.A. 21-4311 and 21-4316 and any amendments thereto.

(b) The animal control officer or law enforcement officer shall notify the owner or keeper of the dog that the hearing will be held in municipal court, at which time evidence will be presented that the dog is dangerous and at which time the owner or keeper of the dog may present evidence to rebut evidence presented by the City and present such other evidence as may be relevant.

(1) In making a determination, the municipal judge shall consider the following:

- (A) The seriousness of the attack or bite;
- (B) Past history of attacks or bites;
- (C) Likelihood of attacks or bites in the future;
- (D) The condition and circumstances under which the animal is kept or confined;
- (E) Other factors which may reasonably relate to the determination of whether or not the animal is vicious.

(2) The failure of the owner or keeper to attend or participate in the hearing shall not keep the judge from making the appropriate determination concerning the dog. The hearing shall be held promptly within no less than five (5) nor more than twenty (20) days after service of notice upon the owner or keeper of the dog. The City shall have the burden of proof to show that the dog is dangerous pursuant to Section 2-101.

(c) If a determination is made at the hearing that the dog is dangerous, the owner or keeper shall comply with the provisions of this Article within fifteen (15) days. If the owner fails to comply with the provisions of this Article within the time provided, the dog shall be destroyed. If the owner or keeper of the dog contests the determination, he or she may appeal within ten (10) days to the district court pursuant to law.

(d) It shall be an affirmative defense to charges issued under this article that the dog was provoked, teased, injured and was protecting itself, its owner, its offspring or another human being.

**2-402           CONTROL OF DANGEROUS DOG; REGISTRATION AND**

**CONFINEMENT.**

(a) If the municipal court judge determines that a dog is dangerous pursuant to this Article, the owner or keeper of the dangerous dog shall be required to comply with the following:

(1) **Registration.** The owner or keeper shall annually register the dangerous dog with the City, on such forms designated by the City Clerk, and shall have a microchip inserted into the dog by a licensed veterinarian or a duly incorporated humane society. The microchip shall detail the dangerous dog registration and such other information as may be appropriate to determine the ownership of the dog. The owner or keeper shall pay an annual registration fee to be established by the city council in the annual fee resolution and shall pay all costs associated with the microchip procedure and registration of the dog. The owner or keeper shall be responsible for maintaining with the City Clerk the address of the owner or keeper and the dangerous dog. The owner or keeper shall notify the City Clerk within seven (7) days of a change in address for the owner or keeper and dangerous dog.

(2) **Confinement.** All dangerous dogs shall be confined in a secure enclosure. It shall be unlawful for any owner or keeper to maintain a dangerous dog upon any premises that does not have a locked enclosure. It shall be unlawful for any owner or keeper to allow a dangerous dog to be outside of the dwelling of the owner or keeper or outside of a secure enclosure unless it is necessary for the owner or keeper to obtain veterinary care for the dangerous dog or for the limited purposes of allowing said dangerous dog to urinate or defecate or to sell or give away the dangerous dog or respond to such orders of law enforcement officials as may be required.

(A) In such event, the dangerous dog shall be securely muzzled and restrained with a leash not exceeding four (4) feet in length, and shall be under the direct control and supervision of the owner or keeper of the dangerous dog. The muzzle shall be made and used in a manner that will not cause injury to the dog or interfere with its vision or respiration, but shall prevent it from biting any human or animal.

(3) **Sterilization.** The owner shall pay for a licensed veterinarian to spay or neuter the dangerous dog before it will be released to the owner.

(4) **Signs.** The owner of a dangerous dog shall display in a prominent place on his or her premises a clearly visible warning sign indicating that there is a vicious dog on the premises. A similar sign is required to be posted on the pen or kennel of the animal.

(5) **Insurance.** No dangerous dog shall be licensed by the city for any licensing period unless the owner or keeper of such dangerous dog shall present to the city clerk proof that the owner or keeper has procured liability insurance in the amount of at least \$100,000, covering any damage or injury which may be caused by such dangerous dog during the 12 month period for which licensing is sought.

(A) Such policy shall contain a provision requiring the city to be named as additional insured for the sole purpose of the city to be notified by the insurance company of any cancellation, termination or expiration of the liability insurance policy.

(B) The owner or keeper shall maintain and not voluntarily cancel the liability insurance required by this section during the 12 month period for

which licensing is sought, unless the owner or keeper shall cease to own or keep the dangerous dog prior to expiration of such license.

**2-403****VIOLATION OF REQUIREMENTS FOR DANGEROUS DOG.**

(a) It shall be unlawful for any person to violate the provisions of this Article. Any person found guilty of violating the provisions of this Article shall be assessed, fined, and the animal disposed of, as provided below:

(1) **At-Large.** Any dangerous dog that is not confined or registered as required pursuant to this Article shall be impounded by an animal control officer or a law enforcement officer. In addition to all costs for impoundment, the owner or keeper shall pay a Two Hundred Fifty Dollar (\$250.00) fine and may require the owner to provide a secure six-sided enclosure before the dog may be returned. For a second offense within twenty-four (24) months, in which the dog is not confined or registered as required pursuant to this Section, in addition to all costs for impoundment, the owner or keeper shall pay a Five Hundred (\$500.00) fine and the animal control officer or law enforcement officer is empowered to impound the dog, and after the expiration of a ten (10) day waiting period, exclusive of Sundays and holidays, shall dispose of the dog in a manner to be determined by the animal control officer. The judge shall have no authority to suspend the fine or any portion thereof.

(2) **Attack on Human.** If any dangerous dog shall attack, assault, wound, bite, or otherwise injure or kill, or assist in such injury or killing, a human being, the owner or keeper shall pay a Five Hundred Dollar (\$500.00) fine and the animal control officer or law enforcement officer is empowered to impound the dog, and after the expiration of a ten (10) day waiting period, exclusive of Sundays and holidays, shall humanely euthanize said dog. The judge shall have no authority to suspend the fine or any portion thereof.

(3) **Attack on Other Animal.** If any dangerous dog shall kill or wound, or assist in killing or wounding, any animal, the owner or keeper shall pay a Two Hundred Fifty Dollar (\$250.00) fine, and the animal control officer or law enforcement officer is empowered to impound the dog, and after the expiration of a ten (10) day waiting period, exclusive of Sundays and holidays, shall destroy said dog. The judge shall have no authority to suspend the fine or any portion thereof.

(b) If the owner or keeper of a dog impounded pursuant to this Section shall believe that there shall not have been a violation of the provisions of this Section, such owner may petition the Municipal Court, on forms approved by the Municipal Judge, petitioning that the impounded dog not be destroyed. The impounded dog shall not be destroyed pending the resolution of such owner's petition if the petition shall have been filed within five (5) days of impoundment of such dog and notice shall be have been delivered within five (5) days of the impoundment of such dog. The dog shall remain impounded pending the determination of the petition. If the court shall find that there shall not have been a violation, such dog shall be released to the custody of the owner upon the payment of the expenses by the owner or keeper.

(c) In addition to the fines provided in this Section, the Municipal Judge shall have the authority to sentence the person adjudicated guilty of this Article to serve up to a maximum of six (6) months in jail.

(d) Nothing in this Article shall be construed to limit the Municipal Judge's authority to impose other fees or fines appropriate with other provisions of this chapter or the city code.

**2-404 ANIMALS; THREATS TO PUBLIC SAFETY.**

(a) No person shall harbor, own, or possess any animal that is an immediate threat to public health and safety.

(b) Nothing in this chapter shall be construed to prevent the animal control officer or any law enforcement officer from taking whatever action is reasonably necessary to protect himself or herself or members of the public from injury or danger, including immediate destruction of any dangerous or vicious animal without notice to the owner.

(c) If a complaint has been filed in the municipal court against the owner of an impounded animal for a charge under this section, the animal shall not be released except on the order of the municipal judge, who may also direct the owner to pay all impounding fees in addition to any penalties for violation of this chapter. The municipal judge may, upon making a finding that an animal is dangerous or vicious or that it represents a clear and present danger to the citizens or to other animals in the community, order the animal to be destroyed in a humane manner by the animal shelter. Surrender of an animal by the owner thereof to the animal control officer does not relieve or render the owner immune from the decision of the court, nor to the fees and fines which may result from a violation of this section.

(d) The Municipal Judge shall have the authority to sentence the person adjudicated guilty of this section to serve up to a maximum of six (6) months in jail and to pay a fine not to exceed \$1,000.00.

(e) Notwithstanding any other provision of this article or chapter to the contrary and irrespective of whether an animal has been declared dangerous pursuant to this article, the Municipal Judge may order any animal destroyed if the Judge determines that the animal is an immediate threat to public health and safety and that confinement and registration of an animal by the owner or keeper of the animal as provided in this article will not adequately protect public health and safety. In making such determination the Judge may consider the severity of any attack by the animal or any such other relevant information.

**2-405 *Reserved for future use.***

**2-406 IMPOUNDMENT OF RABIES SUSPECTS.**

(a) Any law enforcement officer or local health officer may take up, upon private or public property, any animal which has bitten or scratched a person or other animal and impound the animal in the city pound, securely penned and separated from other animals, or in a veterinary hospital or animal care facility for a period of not more than 30 days during which time the local health officer shall determine whether or not such animal is suffering from a disease and, if not, the local health officer shall authorize the release of the animal upon payment by the owner of the boarding fee therefore. The health officer may authorize the keeping of any such animal on the owner's premises if the owner produces a rabies vaccination certificate showing that the animal has valid rabies vaccination

protection. Impoundment costs shall be borne by the owner. If in the opinion of the local health officer symptoms develop justifying a microscopic examination, then the animal shall be humanely euthanized and examination made by the state board of health or a privately certified or publicly accredited laboratory authorized to provide such testing.

(b) In lieu of the provisions of subsection (a), the owner of any such animal may, at his or her own expense, take such animal to any duly qualified and licensed veterinarian in the city for observation. Such veterinarian shall report his or her findings in writing to the local health officer. If in the opinion of such veterinarian a microscopic examination is justified, then the animal shall be turned over to the animal control officer or any law enforcement officer to be killed and examination made by the state board of health.

(c) Any animal desired for observation by the local health officer under this section shall be delivered to the animal control officer or any law enforcement officer upon demand and shall not be withheld, hidden or harbored. Any person violating this provision shall be guilty of a violation of this code. Upon refusal of any person to so deliver such animal, the municipal judge shall cause a warrant to be issued for the arrest of such person, which warrant shall also provide for the surrender of the animal and shall be lawful authority for the apprehending and forcible taking of such animal.

**2-407 ANIMALS BITTEN BY RABID ANIMALS.** Whenever a dog, cat or other animal is bitten by a rabid animal or an animal later proved to have been rabid, it shall be the duty of the owner of the animal that is bitten, to report that fact to the local health officer and/or the police department. It shall also be the duty of the owner of the bitten animal to either destroy or have his or her bitten animal destroyed unless:

(a) The animal which was bitten had been vaccinated against rabies at least three weeks before being bitten and has a current vaccination; and

(b) If the bitten animal has a current vaccination, it shall be confined for ninety (90) days; and

(c) The bitten animal shall be released from confinement only upon written order from the local health officer, who declares the animal to be free of rabies; and

(d) If the animal is found to have contracted rabies during confinement, it shall be properly disposed of.

**2-408 RABIES EMERGENCY; PROCLAMATION.** The animal control officer is hereby authorized whenever in his or her opinion the danger to the public safety from rabid animals is made imminent to issue a proclamation ordering all persons owning any animal in the city to confine the animal in a good and sufficient enclosure from which the animal cannot escape. Any animal not confined during such time may be disposed of wherever found by any police officer, or the animal control officer of the city. The owner of such animal shall be prosecuted for such violation thereof.

**2-409** *Reserved for future use.*

**2-410 EXOTIC ANIMALS.**

(a) It shall be unlawful for any person, firm or corporation to keep, maintain or have in his or her possession or under his or her control within the city any poisonous reptile or any other dangerous wild animal or reptile, any vicious or dangerous animal or any other animal or reptile of wild, vicious or dangerous propensities.

(b) It shall be unlawful for any person to keep, maintain or have in his or her possession or under his or her control within the city any of the following animals:

- (1) All poisonous animals including rear-fang snakes.
- (2) Apes: Chimpanzees; gibbons; gorillas, orangutans; and saimangs.
- (3) Baboons.
- (4) Badgers.
- (5) Bears.
- (6) Bison.
- (7) Bobcats.
- (8) Cheetahs.
- (9) Crocadians, 30 inches in length or more.
- (10) Constrictor snakes, eight feet in length or more.
- (11) Coyotes.
- (12) Deer; includes all members of the deer family, for example, white-tailed deer, elk, antelope and moose.
- (13) Elephants.
- (14) Game cocks and other fighting birds.
- (15) Hippopotami.
- (16) Hyenas.
- (17) Jaguars.
- (18) Leopards.
- (19) Lions.
- (20) Lynxes.
- (21) Monkeys.
- (22) Ostriches or Emus.
- (23) Pumas; also known as cougars, mountain lions and panthers.
- (24) Raccoons.
- (25) Rhinoceroses.
- (26) Skunks.
- (27) Tigers.
- (28) Wolves.

(c) The prohibitions of this section shall not apply to:

- (1) A bona fide zoo, as defined by the American Association of Zoological Parks and Association of Zoological Parks and Aquariums;
- (2) A veterinary clinic operated by a licensed veterinarian;
- (3) A licensed medical institution or accredited educational institution;
- (4) A carnival or circus properly licensed or approved by the city;
- (5) A person or business exhibiting an animal for show or other temporary purpose on public property as part of an educational or community event that has been authorized by the city.
- (6) A facility licensed by the Kansas Animal Health Department for the purpose of impounding, sheltering, or caring for animals and legally zoned or

permitted within the City to operate such a facility.

(d) The exemptions in subsection (c) above shall be valid only if:

(1) Their location conforms to the provisions of the zoning ordinance of the city.

(2) All animals and animal quarters are kept in a clean and sanitary condition and so maintained as to eliminate objectionable odors.

(3) Animals are maintained in quarters so constructed as to prevent their escape.

(e) The municipal judge shall have the authority to order any animal deemed vicious confined, destroyed or removed from the city.

**Section 5. EXISTING SECTION REPEALED.** Chapter 2 of the Code of the City of Osawatomie as adopted prior to the passage of this Ordinance is hereby repealed.

**Section 6. EFFECTIVE DATE.** This ordinance shall take effect and be in force from and after its passage and one publication in the official City newspaper.

PASSED AND APPROVED by the Governing Body of the City of Osawatomie, Kansas, a majority being in favor thereof, this 23rd day of May, 2013.

APPROVED AND SIGNED by the Mayor.

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L. Mark Govea  
Mayor

(SEAL)

ATTEST:

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Ann Elmquist  
City Clerk