



LEGAL DIVISION
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Memorandum

DATE: January 31, 2007
TO: Bruce Walden, City Administrative Officer
Cc: Mayor and Council
FROM: Jim Gitz
RE: Animal Control Amendments

Attached are the final changes to the Animal Control Ordinance, Chapter 4 of the Urbana City Code. The changes are as follows:

(1) Defines "attack" in order to clearly indicate a single event can be the basis of a vicious dog charge. This change is the result of a court proceeding.

(2) Amends Section 4-6, clarifies veterinarian expenses as a recoverable cost, allows termination of ownership rights through a judicial proceeding, and allows a court to bar ownership of any animal pursuant to Section 4-6(d).

(3) Amends Section 4-8, to provide for a defendant's liability for impoundment costs for animals used for entertainment purposes.

(4) Amends Section 4-9 to increase the maximum fine from \$500 to \$750 consistent with other City fines for dogs used in conjunction with criminal acts.

(5) Amends Section 4-10 to indicate impoundment is at the owner's expense for violations of Section 4-9.

(6) Amends Section 4-13 to provide language regarding impoundment, veterinarian expenses, and procedures that are applicable when a diseased animal is subject to impoundment.

(7) Amends Section 4-24 in regard to impoundment costs, thereby clarifying that the owner is responsible for all costs incurred by the City.

(8) Amends Section 4-26 to include a provision that the City may seek a court judgment for its costs, either separately or as part of a pending case involving animal control. This would potentially streamline collection actions.

(9) Amends Section 4-27 in regard to administrative review of a hearing officer's decision. Provides that the appellant must pay for transcript fees and costs instead of the City. Provides a bond requirement. Also allows the City to seek a judgment at the conclusion of an administrative review hearing for costs incurred during impoundment.

ORDINANCE NO. 2007-01-019

AN ORDINANCE AMENDING CHAPTER 4, ANIMALS AND FOWL

WHEREAS, animal control issues are a frequent source of City services in the Urbana community;

WHEREAS, many animal control cases go before the City's Hearing Officer and to the Circuit Court for adjudication;

WHEREAS, such proceedings have identified some shortcomings and ambiguities in the City's existing Ordinance;

WHEREAS, animal control costs, especially for impoundment, have escalated in recent years; and

WHEREAS, the City of Urbana tax payers should not shoulder thousand of dollars in costs for isolated incidents of impoundment and medical care while the offending party pays little or nothing,

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF URBANA, ILLINOIS, as follows:

Section 1. Chapter 4, Animals and Fowl, of the Code of Ordinances of the City of Urbana is hereby amended as follows in sections 4-1, 4-6, 4-8, 4-9, 4-10, 4-13, 4-24, 4-26, 4-27, with the underlined text indicating new language and strike-throughs indicating deletions:

**CHAPTER 4
ANIMALS AND FOWL**

Sec. 4-1. Definitions.

The following words and phrases, when used in this chapter, shall have the following meanings respectively ascribed to them:

A day shall mean a calendar day consisting of a twenty-four (24) hour period from one midnight to the next succeeding midnight.

Animal shall mean any vertebrate species, other than man.

Animal shelter shall mean the agency or business that has contracted with the city to provide impoundment and animal shelter services.

At large shall mean off the premises of the owner and not under the control of a leash of the owner, possessor or keeper. For the purposes of this chapter, voice control shall not be considered as control.

Attack means to charge in an aggressive manner such that a reasonable person would be put in fear that biting will follow. As used in this Chapter, the term shall not require actual physical injury to be inflicted in order to be deemed an “attack”.

Dangerous animal shall mean any individual animal which when either unmuzzled, unleashed, or unattended by its owner, or a member of the owner's family, in a vicious or terrorizing manner, approaches any person in an apparent attitude of attack upon streets, sidewalks, any other public place, or any property other than the property of the animal's owner. No dog shall be declared dangerous solely because of its breed.

Dog means all members of the family Canidae.

Found to be dangerous shall mean that the hearing officer or a court of competent jurisdiction has found the animal to be a "dangerous animal" as defined in this section and has entered an order based on that finding.

Found to be vicious shall mean that the hearing officer or a court of competent jurisdiction has found the animal to be a "vicious animal" as defined in this section and has entered an order based on that finding.

Hearing officer means the animal control officer or a designee appointed by the animal control officer, animal control warden, or by the city attorney.

Leash shall mean a cord, rope, strap or chain securely fastened to an animal by a collar or harness, and of sufficient strength to keep such animal under control.

Owner, possessor or keeper shall mean any person having a right of property in an animal, who keeps or harbors an animal, or has it in his/her care, or acts as its custodian,

exerts control over it, or who knowingly permits an animal to remain on or about premises owned or occupied by such person.

Vicious animal means:

(1) Any individual animal:

- a. That when unprovoked inflicts bites or attacks a human being or a domestic animal either on public or private property;
- b. With a known propensity, tendency, or disposition to attack without provocation, to cause injury or to otherwise endanger the safety of human beings or domestic animals;
- c. That has as a trait or characteristic and a generally known reputation for viciousness, dangerousness, or unprovoked attacks upon human beings or other domestic animals; or
- d. Which when either unmuzzled, unleashed or unattended by its owner, possessor or keeper, in a vicious or terrorizing manner, has approached any person in an apparent attitude of attack upon streets, sidewalks, any public grounds or places, or any property not owned or occupied by its owner, on three (3) or more separate occasions.

(2) No animal shall be deemed "vicious" solely because it is a professionally trained dog for law enforcement or guard duties, or if it bites, attacks, or menaces anyone who has tormented or abused it and the animal's response is proportionate to the provocation.

(3) No dog shall be classified as vicious solely because of its breed.

Sec. 4-6. Cruelty to animals.

(a) No person shall commit cruelty to animals. A person commits cruelty to animals when that person knowingly:

- (1) Confines the animal in such a manner so that it is forced to stand, lie, or sit in ~~its own~~ excrement;
- (2) Fails to provide living quarters of sufficient size to exercise and move about;

- (3) Fails to provide quarters that are protected from excessive heat or cold, precipitation, wind, or other effects of the elements;
 - (4) Fails to keep an animal in a clean, sanitary and healthy manner;
 - (5) Deprives the animal of proper veterinary care or adequate sustenance;
 - (6) Tethers an animal with a choke chain;
 - (7) Tethers an animal on a leash of a weight or in such a manner that prevents the animal from moving freely without entanglement;
 - (8) Abandons, overworks, tortures, or torments any animal;
 - (9) Unjustifiably kills or injures any animal, or attempts to kill or injure any animal in a cruel or unjustifiable manner;
 - (10) Kills or injures a domestic animal not belonging to him;
 - (11) Allows an animal to remain unattended by a competent person in an enclosed motor vehicle when the outside ambient air temperature exceeds eighty (80) degrees Fahrenheit or confines an animal in an area without adequate air circulation;
 - (12) Crops an animal's ear, docks an animal's tail or performs other surgeries except as a licensed veterinarian of the State of Illinois; or
 - (13) Causes, instigates permits, facilitates aids, abets, encourages, or attends any fight or other combat between animals or between animals and humans.
- (b) Any person who causes, instigates, permits, facilitates, aids, abets, or encourages any violation of this section shall be guilty of the violation.
- ~~(c) Cruelly treated animals shall be impounded, may be given medical care at the owner's expense, and may be euthanized at the owner's expense when appropriate in the judgment of the animal control officer to prevent further suffering. Animals that have been treated cruelly as defined in subsection (a) above shall be impounded and may be given veterinary care at the owner's expense and may be euthanized at the owner's~~
judgment of the animal control officer to prevent further suffering. Animals that have been treated cruelly as defined in subsection (a) above shall be impounded and may be given veterinary care at the owner's expense and may be euthanized at the owner's

expense when appropriate in the judgment of the Animal Control Officer to prevent further suffering. If there is a plea or finding of “guilty”, the defendant shall be responsible for all costs, including any veterinary costs and the cost of impoundment, from the date of impoundment through the conclusion of the Court proceedings. However, regardless of whether the owner is found guilty of the charges brought or not, the owner shall be responsible for any and all veterinary costs incurred during impoundment.

(d) If circumstances warrant, the City may seek to terminate ownership rights to an abused animal as well as seek a fine in court proceedings. If the court terminates such rights, it shall also determine whether the subject animal is a suitable candidate for adoption or should be euthanized in the best interests the public and the animal. Such findings shall be based on the evidence presented. However, the Court shall treat prior adjudications pursuant to sections 4-6, 4-7, 4-9, or 4-11 as a rebuttable presumption of unsuitability for continued ownership and care of an animal. The Court may also bar acquisition or continued ownership of any other animal(s) for a period of time which the court deems reasonable.

Sec. 4-8. Seizure and disposition of animals and other items illegally used in entertainment.

(a) Law enforcement officers with the police department for the City of Urbana shall seize and impound any and all animals and seize any equipment, money or other proceeds utilized in or directly related to any violation of section 4-7 herein. Animals and other items impounded or seized shall be held for evidence and for final disposition by the court.

(b) The city shall give notice to the person from whom the animals, equipment, money or other proceeds were seized pursuant to paragraph (a) above, or to the person in possession as owner, or lessee of the premises where said items were found, or if the names of any of these persons are unknown to the city, by posting notice upon the outer door of the premises. The notice shall be directed to any person claiming an interest in the property or money, to come before the court on a specified date, not less than three (3) days from the date of the notice, and to show cause, if any, why the items should not

be sold at public auction as contraband, or otherwise be forfeited as contraband to the city for disposition as authorized herein.

(c) If in the court's opinion, after a full hearing, or upon the default of those notified to appear, it appears to the court that the items seized are in fact contraband, the court shall order disposition of said items in one or more of the following ways:

(1) Any animals forfeited under this section shall be either humanely euthanized, offered for adoption, or otherwise disposed of in accordance with any controlling Champaign County or City of Urbana ordinances, or provisions of state law.

(2) Any money forfeited under this section shall be forfeited to the city treasury.

(3) Any other items forfeited under this section shall be sold at a public auction to the highest bidder for cash, and the proceeds paid into the city treasury.

(d) Any defendant found guilty under Section 4-7 shall be liable for any and all costs the City has incurred, including, but not limited to, impoundment costs, veterinary costs, and the cost of euthanasia (if utilized). All such costs shall be in addition to fines and court costs, not in lieu of them

Sec. 4-9. Prohibition of use of dogs in conjunction with criminal acts.

No person who owns, possesses, or controls any dog shall use the dog to further a criminal act, nor suffer or permit the dog to be so used. If the dog's behavior impedes law enforcement efforts to investigate or stop criminal behavior, to make any stop or arrest, or to serve any warrant or execute any search or seizure, the dog shall be irrebutably presumed to have been so used. In addition to forfeiture of the dog, any person violating this section shall be fined no less than ~~five hundred dollars (\$500.00)~~ seven hundred dollars (\$750).

Sec. 4-10. Seizure and disposition of dogs used in violation of section 4-9.

(a) Any dog used in violation of section 4-9 shall be impounded at the owner's expense and held for final disposition by the circuit court at a hearing on the violations of section 4-9. If the name and address of an owner of the dog can be readily ascertained, then the

city shall give written notice to the owner by mail, service of summons, personal service, or other means reasonably calculated to give actual notice, at least ten (10) days prior to any hearing on the violation of section 4-9, informing the owner that the dog may be subject to forfeiture because of the violation of section 4-9.

(b) If the court finds that the dog was used in violation of section 4-9, then the dog shall be forfeited, and shall either be humanely euthanized, offered for adoption, or otherwise disposed of in accordance with any controlling Champaign County or City of Urbana ordinances, or provisions of state law. If, at the hearing on the violation of section 4-9, the court finds in favor of all defendants regarding the alleged violation and dismisses the charge, then the dog shall be released to any individual who can establish ownership in the dog, subject to the payment of any fees owed for the dog's impoundment. If no one attempts to reclaim the dog within seven (7) days of the court's finding in favor of all defendants on the violation of section 4-9, then the dog shall be disposed of as an abandoned dog.

(c) If the owner of the dog cannot be readily ascertained, and no person comes forward to the animal shelter within seven (7) days of the dog's impoundment to notify the shelter of the person's ownership of the dog, the dog shall be disposed of as an abandoned dog.

Sec. 4-13. Diseased animals.

(a) No animal afflicted with a contagious or infectious disease shall be allowed to be exposed in any public place where the health of people or animals may be affected.

(b) If an animal subject to impoundment is or becomes afflicted with a highly contagious or infectious disease during the pendency of court proceedings, the City, after notice to the owner, may have the animal euthanized if the owner is unable or unwilling to post a bond sufficient to pay for the required veterinary care. The animal control officer shall provide a written report to the court in the event of such an action.

(c) If an impounded animal's condition poses an imminent threat to public health and safety, the animal control officer, based on competent veterinary opinion, may have the animal euthanized, providing that a written report setting forth the relevant facts and nature of the threat is filed with the Court in any pending action.

(d) The owner shall be responsible for any expenses incurred by the City during impoundment, including but not limited to, the cost of impoundment and any veterinarian expenses incurred through the time of either release of the animal or euthanasia. The City shall be entitled to a judgment for these costs as part of any court proceedings concerning the animal or the conduct of its owner.

Sec. 4-24. Impoundment.

An animal is subject to impoundment if it:

- (1) Is found within the city without proper rabies tag or identification tag;
- (2) Is found to run at large, is lost, is apparently abandoned, or is otherwise deemed a stray;
- (3) Has been treated cruelly, or is in distress or in imminent danger of harm to its safety or health;
- (4) Has bitten any person or animal, or is believed to have otherwise behaved in a threatening, dangerous, terrorizing, or vicious manner;
- (5) Has been found to be dangerous, unless it has at all times been kept restrained and muzzled as required by this chapter;
- (6) Has been found to be vicious;
- (7) Is believed to be a source or threat of rabies or other infectious disease, is otherwise diseased, or presents a hazard to public health;
- (8) Is a female dog or cat that is readily accessible to a male of the same species during periods of estrus (heat) for said female dog or cat, whether said female dog or cat is on or off the property of its owner, except as part of a planned and supervised breeding;
- (9) Has been used in violation of section 4-7 regarding animals used in entertainment;
- (10) Has been found during a violation of section 4-9 regarding possession of dogs in conjunction with certain drug offenses; or

(11) Is otherwise subject to impoundment under any other section of this chapter or state law.

The owner shall be responsible for all costs incurred during impoundment, including the cost of impoundment, according to the terms and conditions set forth in section 4-26.

Sec. 4-26. Disposition of impounded animals.

(a) Dogs, cats, and other animals may be redeemed from impoundment only upon compliance with this section and only when otherwise permitted by this chapter.

(b) No animal may be redeemed from impoundment unless its owner first pays the impoundment fee as prescribed in section 14-7 of this Code, the daily impoundment fee, the rabies vaccination fee, and any other costs for spaying or neutering, veterinary, or other care.

(c) Animals subject to proceedings to determine whether they are dangerous or vicious may be redeemed from impoundment only at such time as permitted under those proceedings.

(d) If any impounded dog or cat has not been vaccinated against rabies, the impounder shall notify the county rabies control, giving the name and address of the owner. No dog or cat that has been impounded may be released unless it has first been vaccinated for rabies or unless the owner demonstrates that the animal has a current vaccination against rabies.

(e) No dog or cat which is not neutered or spayed, and which has three times been found to roam at large, may be returned to its owner unless it has first been neutered or spayed at the expense of the owner. The neutering or spaying requirement may be satisfied either by having the procedure performed at the place of impoundment or by having the cat delivered to a veterinarian of the owner's choice for performance of the procedure.

(f) Dogs subject to proceedings regarding whether they were possessed in conjunction with certain drug offences may be redeemed from impoundment only at such time as permitted under those proceedings.

(g) Any animal impounded and not redeemed within seven (7) days after being impounded or, in the case of an animal subject to proceedings regarding dangerousness or viciousness, within seven (7) days after the animal is authorized to be redeemed from impoundment, shall be disposed of in a manner consistent with the laws of the state.

(h) The City may seek a judgment for all costs incurred during impoundment of an animal, including but not limited to, the cost of impoundment and veterinarian expenses, separately or as part of any pending action in court involving an animal or a defendant's conduct. Such costs shall be in addition to any fines imposed, not in lieu of them.

Sec. 4-27. Dangerous animal or vicious animal--Hearing and determination.

(a) Notice. The date of service of any notice under this section shall be either the date of personal service or three (3) days from the date that the notice was mailed.

(b) Administrative hearing to be conducted. If the animal control warden, officer or a police officer determines that there exists probable cause to believe that an animal is a dangerous animal or a vicious animal:

(1) The animal shall be impounded; and

(2) An administrative hearing shall be conducted to determine whether that animal is a dangerous animal or a vicious animal.

(c) Notice and time for hearing. The owner of the animal shall be served with a notice of the administrative hearing, either personally or by first class mail to the owner's last known address. The hearing shall be held promptly within not less than five (5) working days nor more than fifteen (15) working days after service of the notice upon the owner, possessor, or keeper of the animal. The service of a notice to appear in the circuit court on an ordinance violation charge, even if that notice refers to charges of vicious or dangerous animals, shall not start the running of the clock for the administrative hearing process.

(d) Conduct of hearing. The hearing shall be open to the public and shall be recorded. The hearing officer may admit into evidence all relevant evidence, including incident reports and the affidavits of witnesses, and live testimony. The hearing officer shall

determine, based upon a preponderance of the evidence, whether the animal is a dangerous animal or a vicious animal. If the notice of the hearing charges that the dog is vicious, but does not charge that the dog is dangerous, the hearing officer may nevertheless determine that the dog is dangerous rather than vicious, if the evidence so warrants.

(e) Notice of determination. The owner of the animal shall be notified in writing of the determination of the hearing officer either personally or by first class mail to the owner's last known address.

(1) If the determination is that the animal is neither dangerous nor vicious, the owner may redeem the animal as otherwise provided in this chapter. The owner shall not be required to pay those daily impoundment fees that are attributable solely to pendency of the administrative hearing but shall be required to pay all other fees.

(2) If the determination is that the animal is dangerous, the owner may redeem the animal as otherwise provided in this chapter, subject to the requirements in this chapter regarding animals found to be dangerous.

(3) If the determination is that the animal is vicious, the animal may not be redeemed, and the notice shall also state that the animal shall be euthanized within five (5) working days of the date of the notice unless the owner requests a stay of ten (10) working days during which to file a complaint for court review of the hearing officer's determination.

(f) Failure to appear. If the owner of the animal cannot be found or does not appear in person or by legal counsel for the hearing, the hearing officer shall make a determination by default, without need of any testimony or other evidence, that the animal is vicious or dangerous, as well as abandoned, and the animal shall be euthanized without further notice to the owner.

(g) Time for euthanasia--Stay. Upon a determination that the animal is vicious, it shall be euthanized after five (5) working days from the date of the notice to the owner, unless the owner within that time period delivers to the animal control warden at 400 S. Vine St., Urbana, IL 61801, a request to stay the euthanasia for a period of ten (10) working days for the purpose of filing a complaint for court review of the hearing officer's

determination. If, at the end of that period, the city has not received notice that a complaint has been filed, the animal shall be euthanized without further notice to the owner.

(h) The Hearing Officer determination shall be subject to administrative review pursuant to the provisions of Article III of the Illinois Code of Civil Procedure (735 ILCS 5/3-101). The owner shall be responsible for all costs incurred by the City to prepare the record for the Court, including all transcription fees. The owner shall pay to the City, the costs of preparation and certification of the record of proceedings as provided in Section 5/3-109. Since the decision of the Hearing Officer is stayed until final disposition of the case, a bond in the amount determined by the court to be sufficient to cover the costs of impoundment on the day of impoundment through the conclusion of the court proceedings shall be posted prior to the commencement of any hearing on the merits. If the City prevails in the administrative review proceeding, it shall also be entitled to a judgment for the costs of impoundment, including any medical expenses incurred during the pendency of all proceedings.

Section 2. Severability. In the event that any section, clause, provision, or part of this Ordinance shall be found and determined to be invalid by a court of competent jurisdiction, all valid parts that are severable from the invalid parts shall remain in full force and effect.

Section 3. Effective Date. This Ordinance shall be in full force and effect after its passage and approval and publication according to law.

This Ordinance is hereby passed by the affirmative vote, the "ayes" and "nays" being called, of a majority of the members of the Council of the City of Urbana, Illinois, at a meeting of said Council.

PASSED by the City Council this ____ day of _____, 2007.

AYES:

NAYS:

ABSTAINED:

Phyllis D. Clark, City Clerk

APPROVED by the Mayor this ____ day of _____, 2007.

Laurel Prussing, Mayor

CERTIFICATE OF PUBLICATION IN PAMPHLET FORM

I, Phyllis D. Clark, certify that I am the duly elected and acting Municipal Clerk of the City of Urbana, Champaign County, Illinois.

I certify that on the ____ day of _____, 20____, the corporate authorities of the City of Urbana passed and approved Ordinance No.

_____, entitled "**AN ORDINANCE AMENDING CHAPTER 4, ANIMALS AND FOWL, OF THE URBANA CITY CODE**", which provided by its terms that it should be published in pamphlet form.

The pamphlet form of Ordinance No. _____ was prepared, and a copy of such Ordinance was posted in the Urbana City Building commencing on the ____ day of _____, 20____, and continuing for at least ten (10) days thereafter. Copies of such Ordinance were also available for public inspection upon request at the Office of the City Clerk.

DATED at Urbana, Illinois, this ____ day of _____, 20_____.

(SEAL)

CITY CLERK