

ORDINANCE NO. 2255

AN ORDINANCE AMENDING THE CODE OF THE CITY OF GARDNER CHAPTER 6 ANIMAL CONTROL AND PROTECTION AND REPEALING ORDINANCES 1576 AND 1773.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF GARDNER, KANSAS:

SECTION ONE: That Chapter 6 Animal Control and Protection is hereby amended to read as follows:

CHAPTER 6. Animal Control and Protection Article 1. Animals

6-101 DEFINITIONS. For the purpose of this Chapter, the following terms, phrases, words and derivations shall have the meaning given in this section. The word "shall" is always mandatory and not merely directive.

- 101.1 ANIMALS, as used in this Chapter, means all vertebrate animals such as, but not limited to, bovine cattle, horses and other equines, hogs, goats, rabbits, sheep, chickens, ducks, geese, turkeys, pigeons, and other fowl, dogs, cats, or wild mammals, reptiles, fish or birds that have been tamed, domesticated or captivated.
- 101.2 ANIMAL CONTROL OFFICER.. For the purpose of this Ordinance, Animal Control Officer shall mean the assigned Animal Control Officer, a Public Safety Officer, or any other personnel requested to render aid and assistance in the enforcement of any provision of this Chapter.
- 101.3 AT LARGE - An animal shall be deemed to be "at large" if not secured by a leash or lead, unless the animal shall be on the premises of the owner and under immediate control of a responsible person and obedient to that person's commands.
- 101.4 OWNER means any person, partnership or corporation owning, keeping or harboring one or more animals. An animal shall be deemed to be harbored if it is fed or sheltered for three consecutive days of more.
- 101.5 EXOTIC ANIMAL means; any wild animal not customarily confined by humans for domestic purposes. An exotic animal shall include, but not limited to, wild cats, wolves, bears, non-human primates, crocodiles, alligators, caimans, venomous snakes and other animals not indigenous to this region of the Unites States, but excluding fowl, ferrets and small rodents of varieties used for laboratory purposes.
- 101.6 VICIOUS ANIMAL means;
- A. Any animal with a known propensity, tendency or disposition to attack unprovoked, to cause injury to, or otherwise threaten the safety of human beings or domestic animals or;
 - B. Any animal which, without provocation, approaches any person in a vicious or terrorizing manner or apparent attitude of attack upon the streets, sidewalks, or any public ground or places, or;
 - C. Any animal which, without provocation, attacks or bites, or has attacked or bitten a human being or domestic animal or;

D. Any animal owned, trained, or harbored primarily or in part for the purpose of fighting.

E. Notwithstanding the definition of a vicious animal above, no dog may be declared vicious if any injury or damage is sustained by a person 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 animal, or was teasing, tormenting, abusing or assaulting the animal or was committing or attempting to commit a crime.

101.7 VETERINARIAN, a veterinarian duly licensed to practice the profession by the State of Kansas and maintaining an office in the State of Kansas.

6-102 LICENSE AND VACCINATION REQUIRED. All dogs and cats, three months or older, are required to be licensed.

102.1 Before a license will be issued, the owner must produce satisfactory evidence that the dog or cat has been vaccinated against rabies by a licensed veterinarian using the killed tissue vaccine (known as one-year vaccine) within six months previous to the date of the issuance of a license (an approved three-year vaccine is also acceptable within thirty months of the date of the issuance of a license);

102.2 All licenses and permits shall be valid for a period of one year from January 1st to December 31st of each year and shall be issued by the Gardner Public Safety Department. After JULY 1st of each year, the license fee for all new licenses for the remainder of the year shall be reduced by 1/2 if the owner can provide satisfactory evidence of residency or ownership after July 1st,

102.3 Licenses shall be issued in the form of a durable tag which shall be fastened to the dog's/cat's collar or harness and worn at all times when the dog/cat is off the premises of the owner. License tags shall not be transferable. If a tag is lost, a duplicate tag will be issued without charge.

6-103 SPECIAL PERMIT FOR PROHIBITED ANIMAL.

103.1 A special permit can be issued to persons requesting permission to keep or harbor any animal deemed prohibited by any section of this ordinance, or for permission to house more than a total of four dogs and cats in any combination. To obtain a special permit, persons shall make application in writing detailing the purpose and circumstances for the special permit. The Director of Public Safety, or designee, can grant a Special Permit, to include any special conditions and/or restrictions only after review of the application and pertinent documents/reports and the applicable fees are paid.

103.2 If the Special Permit application is denied by the Director of Public Safety, or designee, the animal(s) shall immediately be removed from the city limits. If the animal(s) are not immediately removed from the City, the Animal Control Officer may issue a summons into court for the specified violation(s). Additionally, the animal(s) shall immediately be removed from the location where they are being housed and lodged at the Animal control Facility, at the owner's expense, until final disposition of the case by the court, or special order(s) are rendered by the Municipal Court Judge.

103.4 Upon approval of the Special Permit, periodic checks by the Animal Control Officer can be made to ensure that the conditions of Special Permit(s) are being adhered to. Failure to comply with any condition or restrictions of the Special Permit shall be grounds for revocation of the Special Permit by the Director of

Public Safety or designee.

103.5 In the event that a Special Permit is revoked, the Animal control Officer may issue a summons into court for the specified violation(s). Additionally, the animal(s) shall immediately be removed from the location where they are being housed and lodged at the animal control facility, at the owner's expense, until final disposition of the case by the court, or special order(s) are rendered by the Municipal Court Judge.

6-104 BREEDER PERMIT. A breeder permit is required for all persons engaged in the breeding of any animal not prohibited by any section of this ordinance. Special conditions may apply to persons engaged in the breeding of animals so as not to maintain any public nuisances to surrounding residences or businesses.

SECTION TWO: That Section 9-105.1 is hereby amended to read as follows:

6-105 LICENSE FEE. An approved license or permit shall be issued after payment of the applicable fee.

105.1 The applicable fees are:

- A. For each unneutered male dog/cat.....\$14.00
- B. For each unspayed female dog/cat.....\$14.00
- C. For each neutered male dog/cat.....\$7.00
- D. For each spayed female dog/cat.....\$7.00
- E. Special Permit.....\$55.00
- F. Breeders Permit.....\$30.00

6-106 ANIMALS: KEEPING PROHIBITED. It shall be unlawful, without a special use permit, to keep, harbor, own or in any way possess within the corporate limits of the City of Gardner, Kansas:

106.1 Any wild or exotic animal as defined in section 101.5

106.2 Any animal having poisonous bites.

106.3 Any vicious animal that has not met the requirements of any special conditions or has been ordered out of the City boundaries or ordered to be euthanized.

106.4 Any animal that would be normally associated with that of being a farm animal; (including but not limited to a horse, cow, pig, chicken, rooster, goat, etc.) in areas not zoned for agricultural use.

106.5 More than a combined total of four (4) dogs or cats or any combination of dogs and cats over six months of age.

6-107 CONTROL OR PROTECTION OF ANIMALS IN GENERAL.

107.1 Every owner of any animal shall exercise proper care and control of his/her animal to prevent the animal from becoming a public nuisance. Excessive or untimely barking, molesting passersby, chasing vehicles, attacking other domestic animals, depositing excretory matter on property other than that of the owner, damaging property, and running at large shall be

deemed a nuisance and are unlawful activities under this Chapter. The owner of every animal shall be responsible for the removal of any excreta deposited by his/her animal(s) on public walks, recreation areas, or private property.

107.2 It is unlawful for any person to:

- A. Permit any vicious animal to run loose on or within the owner's premises in such a manner as to endanger the safety of any person lawfully entering or passing by such premises;
- B. To allow any yard, pen, room, building or any other place where animals are kept within the city to become filthy, offensive, unwholesome or annoying, or to allow any decayed, putrid or offensive matter to accumulate thereon;
- C. Permit his/her animal to run at large; animals found by the Animal Control Officer to be at large may be taken and impounded in the animal shelter and the Animal Control Officer may issue a uniform complaint and notice to appear to the owner;
- D. Allow unspayed female dogs/cats to be away from confinement on premises of the owner when such animals are in heat; every animal in heat shall be confined in a closed area so that the dog/cat cannot come into contact with another animal except for planned breeding.

6-108 CRUELTY TO ANIMALS. Except for the exemptions provided in KSA 21-4310(2), it shall be unlawful for any person to:

- 108.1 Intentionally kill, injure, maim, torture or mutilate any animal
- 108.2 Abandon or leave any animal within the City Limits without making provisions for its proper care.
- 108.3 Have physical custody of any animal and fail to provide such food, potable water, protection from the elements, opportunity for exercise and other "care as is needed for the health or well-being of such kind of animal..
- 108.4 Make accessible to any animal, with the intent to cause harm or death, any substance which has in any manner been treated or prepared with harmful or poisonous substances. It is not the intent of this subsection to prohibit the use of poisonous substances for the control of vermin of significance to the pUblc health.
- 108.5 Permit any dogfight, cockfight, bullfight, or other combat between animals or between animals and humans.

6-109. IMPOUNDMENT OF ANIMALS – RETRIEVAL OR DISPOSAL

- 109.1 The Animal Control Officer is authorized to receive and dispose of, at his/her discretion, dogs, cats or other small animals, and to impound, dispose of or destroy any animal running at large in violation of the terms of this Chapter. Such animals may be taken up or impounded even though no citizen makes a complaint and even though the Animal Control Officer issues no notice to appear.. Impoundment shall be subject to the following:

- 109.2 The Animal Control Officer shall attempt notification of the owner of an animal, identifiable by a tag or other approved method, which is impounded under this Chapter, by telephone, letter or personal service.
- 109.3 Such animal shall be confined in the approved shelter by the Animal Control Officer. The animal shall be confined for a period of at least seventy-two hours, with such period of time beginning at nine a.m. on the morning following the day the owner is notified or the attempt made as provided in this section. If the animal is not identifiable by a tag or other adequate identification no notice is required and such animal shall be confined for a period of at least seventy-two hours beginning at nine a.m. of the morning following its capture.
- 109.4 If the owner does not reclaim his/her animal during the impound period, then the Animal Control Officer may dispose of such animal.

SECTION THREE: That Section 6-109.5 is hereby amended to read as follows:

- 109.5 Any currently vaccinated animal covered by permit as required in this Chapter may be claimed by its owner upon payment of an impoundment fee and boarding fee as follows:
- A. Impoundment fee:
 - 1. \$25.00 - first offense
 - 2. \$50.00 – second offense
 - 3. \$75.00 – third and each subsequent offense
 - B. Boarding fees of \$25.00 per day, beginning with the first day of impoundment.
- 109.6 The City of Gardner shall attempt to recover all costs incurred in caring for any animal impounded or held pursuant to the provisions of this Chapter. Cost can include, but not limited to impoundment, boarding, necessary veterinarian care and administrative fees. Said fees shall be in addition to any fine imposed for violation of the provisions of this Chapter.
- 109.7 All unvaccinated animals impounded for reason of suspected disease may be reclaimed by their owners upon evaluation and treatment by a licensed veterinarian approved by the Director of Public Safety.
- 109.8 Any person refusing or failing to comply with the provisions of this section or with the order or directives of the Animal Control Officer relating thereto is guilty of a misdemeanor.

6-110. VICIOUS ANIMAL, DECLARATION, PERMIT AND CONDITIONS, AJUDICATION

SECTION FOUR: That Section 6-110 is hereby amended to read as follows:

- 110.1 When a complaint is received regarding a potentially vicious animal, the Animal Control Officer shall respond to the complaint and initiate an investigation. If in the opinion of the Animal Control Officer, the animal would pose an immediate threat to the general public or other animals if not removed from the location where the animal is housed, the animal shall be impounded, at the owner's expense, at the approved Animal control Facility until completion of the investigation. The Public Safety Director, or designee, after proper

investigation, may declare an animal vicious and shall require a special permit with special conditions such as secure fencing to contain the animal, protection devices such as muzzles, or other conditions that would protect persons and animals.

110.2 If the Public Safety Director determines that special conditions are not appropriate, or if the special conditions have not been followed, or the animal has been involved in a bite case since the imposition of special conditions, the Public Safety Director may have a summons to appear in Municipal Court issued to the owner. The Municipal Court may impose special restrictions, require that the animal be permanently removed from the City or humanely euthanized.

110.3 The Judge of the Municipal Court may, as part of a court proceeding on a city ordinance violation or as a separate proceeding, determine that an animal is vicious and render judgment with the imposition of special conditions, removal from the city, or humanely euthanized. In the event that a summons has been issued to the owner of an animal which has been deemed vicious, and delaying the court hearing to the next available court date would not be in the best interest of public safety, the Public Safety Director, or designee, may request a special hearing with the Judge of the Municipal court to render judgment on the disposition of the animal(s).

6-111 ANIMAL BITING PERSONS/RABIES - REPORT - IMPOUNDMENT AND EXAMINATIONS.

111.1 When any animal subject to rabies has bitten or attacked any person, or when an animal is suspected of having rabies, it shall be the duty of any person having knowledge of such facts to report the same immediately to the Gardner Public Safety Department.

111.2 Such animal shall be confined for a period of ten (10) days as directed by the Animal Control Officer. If the animal possesses a current, verified, rabies vaccinated tag, and the person bitten is the owner or member of the immediate family, the Animal Control Officer can authorize the quarantine of said animal within the confines of the owner's residence. No person shall release from confinement any such animal or remove such animal from its place of confinement to another place without the consent of the Director of Public Safety or designee. The confinement of the animal shall be at the expense of the owner or custodian of such animal. No person shall refuse surrender of any animal for quarantine when demand is made by the order of the Animal Control Officer.

111.3 The Animal Control Officer shall be empowered in his/her discretion to order examination of such animal to determine whether it may have rabies. If the animal dies or is killed, a laboratory examination of the head shall be made.

6-112 CHAPTER ENFORCEMENT.

112.1 The City Animal Control Officer or any properly designated City employee is authorized to enter upon private property for the purpose of enforcing this Chapter. No person shall conceal any animal or otherwise interfere with the proper enforcement of this Chapter. Any person, firm, corporation, partnership or association violating any of the provisions of this Chapter shall, unless otherwise specifically provided, be subject to penalty as provided.

112.2 The Animal Control Officer may issue a uniform complaint and notice to appear to any owner as defined in this Chapter whose animal is in violation of the provisions of this chapter. The owner may enter a voluntary appearance and plea of guilty or no contest to the offense

charged in the complaint upon payment of the amount established by the municipal court schedule of fines, but in no event shall the fine be less than (1) \$25.00 for the first offense, (2) \$50.00 for the second offense, (3) \$100.00 for each subsequent offense. The scheduled fines shall be the minimum fines where a penalty is imposed pursuant to Section 6-116. A uniform complaint issued to the owner of an animal involved in a bite shall have a mandatory court appearance before the JUDGE of the Municipal Court for the City of Gardner, Kansas.

6-113 OFFICERS AUTHORIZED TO SHOOT ANIMALS UNDER CERTAIN CONDITIONS. If after exhausting all reasonable means and methods to catch any animal found in violation of the terms of this Chapter, within the City, running at large or unrestrained, and the Animal Control Officer is unable to take any such animal into custody, or such animal becomes dangerous to handle in the sole opinion of said officer, said officer is hereby authorized, directed and empowered to shoot said animal. The Animal Control Officer may kill, without notice, any animal that is vicious or is believed to be infected with rabies, whether it bears the tag herein provided or not.

6-114 ESTABLISHMENT OF AN ANIMAL SHELTER. There shall be, and is hereby established, an animal shelter at any other place as may be designated by the Director of Public Safety for the purpose of impounding and keeping animals collected by the City, its agents and employees.

6-115 RETRIEVAL WITHOUT RELEASE AND HINDERING OFFICER PROHIBITED. It shall be unlawful for any person, other than duly authorized Gardner Public Safety Department personnel, to retrieve an impounded animal without a release from the Department of Public Safety, or to take or attempt to take from an Animal Control Officer of this City, any animal picked up by him/her under the provisions of this Article, or in any manner interfere with or hinder any Animal Control Officer of this City in catching or picking up any animal.

6-116 PENALTY. Any person convicted of the violation of any provision of this Chapter declaring an unlawful act or for failure to pay the tax herein required, or who fails or neglects any other duty required by this Chapter shall on conviction thereof, be fined not more than one thousand dollars (\$1,000.00) or be imprisoned for not more than six (6) months or be both so fined and imprisoned.

SECTION FIVE: That this Ordinance shall take effect and be in force from and after its adoption by the City Council and publication in the official City Newspaper.

APPROVED and ADOPTED this 17th day of December, 2007.

Carol Lehman, Mayor

ATTEST:

Teresa Anderson, City Clerk

(SEAL)