

ORDINANCE NO. 2022 - 03

AN ORDINANCE OF THE CITY COMMISSION OF DELAND, FLORIDA, AMENDING CHAPTER 4 “ANIMAL CONTROL” OF THE CODE OF ORDINANCES OF THE CITY OF DELAND; BY AMENDING SECTION 4-3 “DEFINITIONS”; BY ADDING A NEW SECTION 4-5.1 “PROHIBITING THE TETHERING OF DOGS AND CATS TO STATIONARY OBJECTS WHILE OUTDOORS; SUBJECT TO SPECIFIC EXCEPTIONS”; BY ADDING A NEW SECTION 4-5.2 “IMPLEMENTING ADMINISTRATIVE ACTIONS AND ENFORCEMENT/PENALTIES” PROVIDING FOR LEGISLATIVE FINDINGS AND INTENT; PROVIDING FOR CONFLICTS; PROVIDING FOR A SAVINGS PROVISION; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Commission of the City of DeLand desires to protect animals from abuse and neglect; and

WHEREAS, improper tethering of animals can cause grave harm or death to animals; and

WHEREAS, the City Commission of the City of DeLand recognizes there is a clear link between animals that are left tethered in one location without supervision and increased aggressiveness; and

WHEREAS, although Section 828.12, *Florida Statutes*, prohibits and makes a criminal offense actions that involve cruelty to animals, no specific prohibition exists in State law with regard to the tethering of dogs or cats and bills introduced in the Florida Legislature proposing to do so have failed; and

WHEREAS, although legislative proposals prohibiting the tethering of dogs and cats have failed, one legislative staff report pertaining to a bill has noted that Section 828.27, *Florida Statutes*, provides that the governing body of a county or municipality may enact ordinances relating to animal control or cruelty and that about 23 of Florida’s 67 counties have ordinances in place prohibiting a dog from being outside or tethered during periods of extreme weather conditions, such as extreme heat, freezing or near-freezing temperatures, during thunderstorms, lightning storms, tornado watches or warnings, or during tropical storm or hurricane watches or warnings; and

WHEREAS, the City of DeLand notes that other cities have also enacted ordinances prohibiting the tethering of dogs and cats; and

WHEREAS, the City Commission of the City of DeLand has deemed approval of this Ordinance to be in the best interest of the residents and citizens of the City of DeLand and to further the public health, safety and welfare; and

WHEREAS, this Ordinance is enacted pursuant to the statutory and constitutional home rule powers of the City of DeLand as set forth at Article VIII, Section 2, of the *Constitution of the State of Florida*; and Chapter 166, *Florida Statutes*, and other applicable controlling law; and

WHEREAS, the City of DeLand has complied with all requirements and procedures of Florida law in processing and advertising this Ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF DELAND, FLORIDA:

Section 1. Legislative Findings and Intent.

(a). The City Commission of the City of DeLand hereby adopts and incorporates into this Ordinance as the legislative findings and intent of the City Commission the City staff report relating to this Ordinance as well as the recitals (whereas clauses) to this Ordinance.

(b). The Florida Animal Control Association (FACA) recognizes that the issue of tethering of animals is a growing concern throughout the State of Florida. The FACA recommended that jurisdictions consider quality of life, public safety, humane treatment and property rights when dealing with the issue of the tethering of animals and that living in “the Sunshine State” presents weather, parasite and other risks to animals kept outdoors. Specifically, the FACA recommends that certain concerns be considered in each community and that limiting tethering to a time limit poses enforcement challenges and, thus, tethered animals kept within a visual range or while the owner is actually outside may eliminate this challenge.

Section 2. Chapter 4 “Animal Control” of the Code of Ordinances of the City of DeLand is hereby amended by amending Section 4-3 “Definitions” by inserting the new underlined language in the existing definitions to be read in full as follows:

Sec. 4-3. – Definitions.

- (w) Tether shall mean a cord, rope, cable, or chain, or similar, which is used to restrain a dog or a cat to a limited area.
- (x) Tethering shall mean the restraining of a dog or a cat by the means of any type of to any fixed object or structure including, but not limited to, a house, garage, dog house, fence, post, motor vehicle, trailer, shed, weight, ground anchor, tree, boat or the ground. Tethering shall not include the use of a leash to walk a dog or a cat or as a form of restraint used in the transportation of a dog or a cat.

Section 3. Chapter 4 “Animal Control” of the Code of Ordinances of the City of DeLand is hereby amended by adding a new Section 4-5.1 “Prohibiting the Tethering dogs or cats to stationary objects while outdoors; subject to specific exceptions” by inserting the new underlined language to be read in full as follows:

Sec.4-5.1 Prohibiting the Tethering of dogs and cats to stationary objects while outdoors; subject to specific exceptions.

- (a). It is prohibited and unlawful for a person to tether a dog or a cat to a stationary object while outdoors in the City of DeLand unless the person charged with a violation proves by clear and convincing evidence that the exception set forth in Subsection (b) is applicable.
- (b). The prohibition set forth in Subsection (a) shall not apply if a person charged with a violation proves, by clear and convincing evidence, all of the following:
- (1). That the dog or cat was in visible range of the owner or responsible party, which person must also be outside with the dog or cat at all times; provided, however, that the dog or cat owner, or responsible person, may leave a dog or a cat tethered outdoors on their property for a reasonable period not to exceed one (1) hour while such owner or responsible person performs a temporary task indoors or on another section of the property. A “temporary task” means a short-duration activity for which a dog or cat might need to be kept outside examples of which include cooking meals and bathing attending to the care of a child or children. In no event may the owner or responsible person leave the property while a dog or a cat is left tethered and unattended, outdoors. A dog or a cat may never be left tethered and unattended on unoccupied, vacant or abandoned property.
 - (2). That the tether was connected with a swivel hook to the dog's or cat's buckle-type collar or a body harness made of nylon or leather that is of sufficient size to adequately and safely restrain the dog or cat using a swivel hook. The swivel hook shall attach to the stationary object or trolley system and is intended to prevent injury to the dog or cat from becoming tangled with other animals or objects and was not attached to the stationary object or trolley in a way that the dog or cat could extend the tether over a fence or other similar object. The tether must, consistent with the above requirements, prevent the dog or cat from being able to jump over a fence while still attached to the tether (which could result in injury or death).
 - (3). That the tether was of a size and weight that was reasonably necessary to safely restrain the dog or cat (and not a heavy chain, cord, wire or any other material not commonly intended to be used

as a collar) without placing excessive strain or weight on the dog or cat, but, in any event, not exceeding 1/10 of the dog's or cat's weight and was a length that was at least either 5 times the length of the animal measured from the nose to the tip of its tail, or 10', whichever is greater, with a trolley cable not elevated more than 7' above the surface.

(4). That the dog or cat was not tethered outside in a period of extreme weather, including, but not limited to, extreme heat (in excess of 85 degrees Fahrenheit) or cold (lower than 50 degrees Fahrenheit), thunderstorms, lightning, tornadoes, tropical storms, or hurricanes.

(5). That the dog or cat had access to water, shelter, shade and dry ground. To that end, the tether must be secured in such a way that it cannot become entangled with other objects and deprive the dog or cat of water, shelter, shade and dry ground.

(6). That the dog or cat was at least 6 months of age.

(7). That the dog or cat was not sick, injured, or a female in heat, and was not vulnerable to being attacked by other dogs, cats or animals or people, without the chance to escape to a protected area.

(8). If there are multiple dogs and/or cats tethered at the same time, that each animal was tethered separately consistent with all of the requirements of this Ordinance.

(9). That the tethering did not occur at any time in the hours beginning at dusk or prior to dawn

(10). That the tethering would not allow the dog or cat to reach a potentially dangerous object or area including, but not limited to, a window sill, edge of a pool, lake, river or canal, a fence, a porch, a tree, a post, a terrace railing or other object or area that poses a substantial risk of injury or strangulation to the dog or cat if the dog or cat jumps over, goes into or goes around the object or area.

(c). The prohibition set forth in this Ordinance does not apply to tethering a dog or cat in a manner that does not jeopardize its health, safety, or well-being of the dog or cat when:

(1). Attending, or participating in, a legal, organized public event in which the dog or cat and the person are permitted attendees or participants.

(2). Actively engaging in conduct that is directly related to the business of shepherding or herding cattle or livestock or related to the

business of cultivating agricultural products and tethering is reasonably necessary for its safety.

- (3). Being treated by a veterinarian or serviced by a groomer.
- (4). Being trained for or actively serving in a law enforcement capacity.
- (5). Being lawfully used to actively hunt a species of wildlife during the hunting season for that species of wildlife.
- (6). Being cared for or used as part of a rescue operation during a natural or manmade disaster.
- (7). Temporarily tethered while being kept in a bona fide humane shelter or at a licensed commercial boarding facility.
- (8). Tethered in accordance with the lawful regulations of a licensed and lawful camping or recreational area.

Section 4. Chapter 4 “Animal Control” of the Code of Ordinances of the City of DeLand is hereby amended by adding a new Section 4-5.2 “Implementing Administrative Actions; Enforcement/Penalties” by inserting the new underlined language to be read in full as follows:

Sec.4-5.2 Implementing Administrative Actions; Enforcement/Penalties.

- (a). The City Manager, or designee, is hereby authorized and directed to implement the provisions of this Ordinance and to take any and all necessary administrative actions including, but not limited to, the adoption of administrative rules.
- (b). Enforcement of the provisions shall be in accordance with the normative code enforcement processes and procedures of the City and the City may seek any legal remedy and initiate any code enforcement process resulting in any penalty as may be available to the City under controlling law.

Section 5. Savings. The prior actions of the City of DeLand relating to animal control activities of the City, as well as any and all related matters, are hereby ratified and affirmed.

Section 6. Conflicts. All Ordinances or parts of Ordinances and other actions of the City Commission in conflict with this Ordinance are hereby repealed.

Section 7. Severability. If any section, sentence, phrase, word or portion of this Ordinance is determined to be invalid, unlawful or unconstitutional, said determination shall not be held to invalidate or impair the validity, force or effect of any other section, sentence, phrase, word or portion of this Ordinance not otherwise determined to be invalid, unlawful or unconstitutional.

Section 8. Codification; Direction to Code Codifier and City Staff; Correction of Scrivener's Errors.

(a). The provisions in Sections 2, 3, and 4 of this Ordinance shall become and be made a part of the *Code of Ordinances of the City of DeLand* and the Sections of this Ordinance may be renumbered or re-lettered to accomplish such intention and the word "Ordinance", or similar words, may be changed to "Section," "Article", or other appropriate word; provided, however, that all other sections shall not be codified.

(b). The Code codifier shall instruct the Municipal Code Corporation to make all changes necessary in the *Code of Ordinances of the City of DeLand* to implement the provisions of this Ordinance and is granted liberal authority to codify the provisions of this Ordinance in such manner and in such places as deemed advisable.

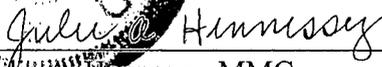
(c). In accordance with the City's ongoing codification program; the City Clerk, in conjunction with the City Attorney, may make corrections to the provisions of this Ordinance relative to Scrivener's errors of whatever type or nature.

Section 9. Effective Date. This Ordinance shall become effective immediately upon adoption.

PASSED AND DULY ADOPTED this 21st day of March, 2022.



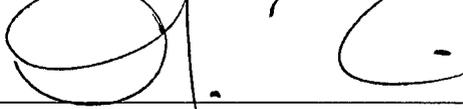
ATTEST:


Julie A. Hennessy, MMC
City Clerk - Auditor


Robert F. Appgar
Mayor - Commissioner

Passed on first reading: February 21, 2022.
Adopted on second reading: March 21, 2022.

APPROVED AS TO FORM AND LEGALITY:


Darren J. Elkind
City Attorney