

## ORDINANCE NO. 1701

### AN ORDINANCE OF THE CITY OF FAIRWAY, KANSAS, REVISING AND REPEALING CHAPTER 4. ENTITLED "ANIMALS" OF THE CODE OF THE CITY OF FAIRWAY, KANSAS.

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

**SECTION 1.** That Chapter 4 of the Code of the City of Fairway is hereby revised to read as follows:

#### Chapter 4 - ANIMALS

##### ARTICLE I. - IN GENERAL

###### Sec. 4-1. - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Animal* means any living organism which is endowed with the power of voluntary motion, excluding human beings.

*Electronic fence* means an electronic device buried in the ground which is used in conjunction with an electronic collar on an animal to control the movement of the animal by emitting an electric shock when the animal approaches the buried device.

*Fowl* means a bird that is customarily used as food or hunted as game, including, but not limited to, those of the order *Galliformes*.

*Owning, keeping or harboring* means encouraging any animal to habitually remain in or upon one's property by means of restraint or by providing food for said animal, provided that the term "owning," "keeping" or "harboring" shall not include the maintenance of a common bird feeder.

###### Sec. 4-2. - Animal Control Officer.

The appointment of the Animal Control Officer and the duties of that office shall be as follows:

(1) The function of Animal Control Services for the City of Fairway will be contracted out by formal agreement, following the City's contract approval requirements and practices at the time approval is sought, or provided by City staff whose duties, in whole or in part, include enforcement of City Ordinances and provision of services related to Animals and Animal Control. The person performing these duties will carry the title of the Animal Control Officer and the duties of that office shall be as follows:.

(2) *Duties* . It shall be the duty of the Animal Control Officer, his deputies and assistants, and under the direction of the Chief of Police, to assist in the enforcement of the provisions of this chapter.

###### Sec. 4-3. - Keeping of animal prohibited; exceptions.

It shall be unlawful for any person to keep or harbor any animal within the corporate limits of the City with the exception of the following:

- (1) Dogs ( *Canis Familiaries* ).
- (2) Cats ( *Felis Catus* ).
- (3) Fish.
- (4) Amphibians less than one foot (1') in length.
- (5) Non-poisonous and non-constricting reptiles less than three feet (3') in length.
- (6) Birds customarily kept in the home, excluding fowl and pigeons.
- (7) Rodents weighing three pounds (3 lbs.) or less.
- (8) Hares.

Sec. 4-4. - Number of dogs or cats limited.

The owning, harboring or keeping of more than three (3) dogs over six (6) months of age or more than three (3) cats over six (6) months of age upon any property in the City shall be deemed a nuisance per se.

Sec. 4-5. - Permission.

- (a) The owner or keeper may apply to the City Council for formal permission to keep an animal not otherwise allowed by Sections 4-3 and 4-4 by submitting an application together with the required application fee as set forth in the fee schedule as adopted by ordinance, and adequately showing that the premises where the animal will be kept will not constitute a nuisance.
- (b) Any variation from Subsection (a) of this section requires approval from the City Council.
- (c) Permission granted in accordance with this section is specific to the animal which is the subject of the request for permission.
- (d) Permission granted in accordance with this section shall be in addition to, and conditional upon, the issuance of a license to each dog owned, harbored or kept upon any property in the City, in accordance with Section 4-32.
- (e) The City Council may revoke permission granted in accordance with this section at any time.

Sec. 4-6. - Penalty.

Any person violating any provision of this chapter shall, upon conviction thereof, be punished by a fine of not more than five hundred dollars (\$500.00).

Secs. 4-7—4-30. - Reserved.

## ARTICLE II. - DOGS AND CATS

Sec. 4-31. - Inoculation required.

- (a) Inoculation against rabies shall be required for all animals of the class *mammalian* , except gerbils, guinea pigs, hamsters, mice, hares and rats whether licensed or not when the animal is owned, harbored, kept or sheltered within the City limits.

- (b) It shall be the responsibility of the owner, harborer, keeper or shelterer to maintain a valid inoculation certificate against rabies. Proof of valid rabies inoculation must be produced upon request of the Animal Control Officer or a police officer.

Sec. 4-32. - Licensing of dogs.

- (a) It shall be the duty of every person keeping or harboring in the City any dog over six (6) months of age to procure a license therefor from the Office of the City Clerk.
- (b) For the issuance of each license provided for in this article, the keeper or harborer shall pay to the City a license fee in the appropriate amount as set forth in the fee schedule as adopted by ordinance. The license shall be for the calendar year and due on January 1, and shall become delinquent on April 1, and subject to delinquent fees in the amounts as set forth in the fee schedule as adopted by ordinance. After two (2) months of delinquency, the City shall issue a complaint and summons for the delinquent keeper or harborer who shall be subject to the penalty provisions set forth in Section 4-6.
- (c) Before the Office of the City Clerk shall issue any license or tag for a dog, the keeper or harborer thereof shall present a current certificate from a licensed veterinarian showing that the dog has been inoculated against rabies. The rabies inoculation must have an effective period of at least one (1) year and show the date of the animal's inoculation and expiration date of the inoculation period. The certificate shall be deemed valid when it is not expired before the owner, harborer, keeper or shelterer submits it to the Office of the City Clerk. Nothing in this article shall require the Office of the City Clerk to keep a copy of the inoculation certificate.
- (d) At the time of the issuance of a license, the Office of the City Clerk shall deliver a license tag showing the registration number and the year of issuance. Upon the payment of a fee in the appropriate amount as set forth in the fee schedule as adopted by ordinance, a replacement tag shall be furnished by the Office of the City Clerk to any such keeper or harborer when a tag has been lost.
- (e) No keeper or harborer of any dog shall allow or permit such dog to be off the premises of the owner or keeper, at any time without a license tag attached to a collar or harness, provided for by Subsection (d) of this section.
- (f) No person shall remove or cause to be removed the collar, harness or tag from any licensed dog without the consent of the owner, keeper or harborer thereof.

Sec. 4-33. - Conditions of enclosure.

All structures or yards wherein animals are kept, or permitted to be, shall be maintained in a clean and neat condition and free from offensive odors.

Sec. 4-34. - Animal health nuisance.

- (a) *Private property.*
  - (1) Any person who maintains any animal in any building, pen or enclosure on his premises which is not kept clean and neat and free from offensive odors at all times, or which is or becomes offensive to those residing in the vicinity, shall be deemed to be a nuisance.
  - (2) No owner, keeper or harborer of any animal shall allow any animal to damage any private property by its activity.

- (3) No owner, keeper or harbinger of any animal shall allow such animal to perform any bodily function of excrement, including but not limited to fecal matter, upon any property not owned by the owner, keeper, or harbinger of such animal unless the owner, keeper or harbinger of such animal immediately and properly removes and disposes of any such waste.
- (4) No owner, keeper or harbinger shall allow any animal to scatter refuse or garbage that is bagged or otherwise contained or cause any condition which threatens or endangers the health or well-being of other persons or animals.
- (b) *Public property.* Any person who maintains an animal under their control while on any City, County, or State owned or maintained property for the general public's access, recreation or use shall:
  - (1) Maintain consistent control of the animal so it will not molest or interfere with any other person's use of the public property.
  - (2) Not allow any animal to damage any public property by its activity in such a way that any other person could be injured or deprived of any use of the public property.
  - (3) Not allow any animal to perform any bodily function of excrement, including but not limited to fecal matter, upon any public property unless the owner, keeper or harbinger of such animal immediately and properly removes and disposes of any such waste.
  - (4) Not allow any animal to scatter refuse or garbage that is bagged or otherwise contained or cause any condition which threatens or endangers the health or well-being of other persons or animals.
  - (5) Not allow or conduct the disposal or burial of any animal upon or in any public property.

Sec. 4-35. - Dogs running at large.

It shall be unlawful for any person keeping or harboring any dog to permit such dog to run at large within the City. For the purpose of this section, any dog shall be deemed to be running at large when found on property other than that of the owner, keeper or harbinger thereof, unless such dog is securely fastened to a leash of sufficient strength to restrain such dog, and such leash is securely held by a responsible person capable of controlling such dog.

Sec. 4-36. - Electronic fence setback requirements.

- (a) From and after October 1, 2014, all electronic fences installed at any location shall be setback twenty feet (20') from the curb unless there is a public sidewalk in which case the setback shall be measured from the edge of the sidewalk which is furthest from the curb.
- (b) A no-fee permit is required; however, the installation location must be verified in compliance with this section by the Building Inspector. If a complaint is registered on an electronic fence thought to be in noncompliance with this section and it is found by the Building Inspector that the electronic fence is in violation of this section, the Building Inspector will order the movement of the fence in compliance with this section.
- (c) From and after October 1, 2014, all electronic fences shall not be considered a structure under the City zoning regulations and shall only be regulated under the provisions of this article.

Sec. 4-37. - Offensive animal noises.

No person shall keep or harbor any animal which, by loud, frequent or habitual barking, howling, yelping or other sound shall annoy or disturb any neighborhood or person.

Sec. 4-38. - Destruction of property by animals.

No person shall keep or harbor any animal which destroys or damages the property of any person other than that of such keeper or harborer.

Sec. 4-39. - Bitches in heat.

Provisions relating to the keeping and confinement of bitches shall be as follows:

- (1) The owner, keeper or person harboring a bitch shall, during the period that such animal is in heat, keep it securely confined and enclosed within a building except when on the keeper's or harborer's premises briefly for toilet purposes while under complete control of a responsible person.
- (2) Any bitch which is not confined and enclosed as provided in this section is hereby declared to be a public nuisance and may be impounded or destroyed at the expense of its owner, keeper or harborer.

Sec. 4-40. - Impoundment.

- (a) Any animal which destroys or damages the property of any person other than that of its owner, keeper or harborer; or any dog found running at large in violation of Section 4-35, may be taken up and impounded at such place in the custody of such agency as the City Council may designate from time to time, where such animal shall be held for seven (7) days.
- (b) For the owner, keeper or harborer of any impounded animal to retrieve their animal from impoundment, it is required that the owner, keeper or harborer pay any applicable impoundment and boarding fees directly to the impoundment facility.
- (c) If an animal is impounded as provided in this article, City personnel will make a reasonable effort to notify the owner, keeper or harborer of such animal of such impoundment.

Sec. 4-41. - Animal bite quarantine procedure.

- (a) *Procedure for quarantine.* The procedure for quarantine of animals shall be as follows:

- (1) Except as provided in Subsection (b) of this section, an animal that bites a person so as to cause an abrasion of the skin shall be quarantined immediately with a licensed veterinarian of the owner's, keeper's or harborer's choice or with a facility designated by the City at the owner's, keeper's or harborer's expense for a period of not less than ten (10) days nor more than twelve (12) days.
- (2) If the owner, keeper or harborer of the animal cannot be immediately notified, the Animal Control Officer or a police officer shall cause such animal to be quarantined immediately, at the owner's, keeper's or harborer's expense, for a period of not less than ten (10) days and not more than twelve (12) days. If the address of the owner, keeper or harborer can be determined, the police officer or the Animal Control Officer shall make a reasonable effort to notify such owner, keeper or harborer that such animal is impounded under the provisions of this section and that such person has the right to redeem the animal at the expiration of confinement upon the payment of any license

fees then owing and the charges of the veterinarian or facility wherein the animal was impounded.

(b) *Exceptions.*

(1) *Determining factors.* In the event the investigating officer determines:

- a. The animal which injured the person did so while confined on a leash on property under the control of the animal's owner, keeper or harborer or within a fence or building enclosing property under the control of the animal's owner, keeper or harborer; and
- b. The animal had a valid rabies inoculation certificate and was duly licensed, if a dog, at the time of the injury;  
then the animal need not be impounded in accordance with the provisions of Subsection (a)(1) of this section, but the alternative procedure in Subsection (b)(2) of this section may be followed.

(2) *Alternative procedure.*

- a. If the injured party, the parent or guardian desires that the animal be impounded and agrees in writing to pay for its board during the period of impoundment, it shall be impounded for the period of time specified in Subsection (a)(1) of this section.
- b. If the injured party, the parent or guardian is unwilling to agree in writing to pay for the animal's boarding during the period of impoundment, the animal shall be permitted to remain on the property of its owner, keeper or harborer, provided that such owner, keeper or harborer signs a written agreement to keep the animal confined to the property for the period specified in Subsection (a)(1) of this section and further agrees to allow the animal to be examined periodically to determine its physical condition during the confinement period. If the owner, keeper or harborer of the animal is unwilling to sign such an agreement, the animal shall immediately be impounded in accordance with the provisions of Subsection (a)(1) of this section.

Sec. 4-42. - Destruction of animals.

The Animal Control Officer or a police officer may kill any animal without notice to the owner, keeper or harborer thereof, whether it bears a tag or not, if such animal is deemed to be a vicious animal, or injured severely or in such pain as to warrant humane destruction. The remains of any animal destroyed, if such animal has or is suspected of having bitten or injured any person, shall be preserved to permit a test to be conducted for rabies, at the owner's expense.

Secs. 4-43—4-74. - Reserved.

ARTICLE III. - DANGEROUS ANIMALS

Sec. 4-75. - Keeping prohibited.

No person shall keep, harbor, possess or allow to be upon any premises occupied by him or under his charge or control within the corporate limits of the City a dangerous or vicious animal. Impoundment of animals whose owners have been cited for violation of this article shall be at the discretion of the Animal Control Officer.

Sec. 4-76. - Definitions.

The following words, terms and phrases, when used in this article, have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Dangerous or vicious animals* means, but is not limited to, any of the following animals:

- (1) Any warm-blooded, carnivorous or omnivorous, wild or exotic animal (including, but not limited to, non-human primates, raccoons, skunks, foxes, hybrid wolves, and wild and exotic cats, but excluding small rodents of varieties used for laboratory purposes);
- (2) Any reptile, arthropod or insect having poisonous bites or stings;
- (3) Any animal, not including police canines active in the line of duty, which the owner or custodian thereof knows or has reason to know has a propensity, tendency or disposition to attack unprovoked, or to cause injury or otherwise endanger the safety of human beings or domestic animals.

*Propensity, tendency or disposition to attack* means any animal which either:

- (1) Unprovoked or upon command attempts to attack, bite or cause injury to a human being or domestic animal; or
- (2) Unprovoked or upon command attacks, bites or causes injury to a human being or domestic animal.

#### Sec. 4-77. - Complaint.

Whenever a sworn complaint is filed in the Municipal Court against the owner of an animal claiming that the animal is dangerous or vicious and in violation of this article, the Municipal Judge shall hold a hearing to determine whether or not the animal is dangerous or vicious within the meaning of this article and thereby in violation of this article as follows:

- (1) *Hearing.* The owner of the animal shall be notified in writing of the time and place of the hearing at least ten (10) days prior to the hearing. 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. The circumstances surrounding the attack or bite.
  - f. Other factors which may reasonably relate to the determination of whether or not the animal is dangerous or vicious.
- (2) *Outcome.* The Municipal Judge shall order the impoundment, muzzling and/or the confinement of the animal accused of being in violation of this article in a manner and location that will ensure that it is no threat to persons or other animals pending the outcome of the hearing. If such impoundment, muzzling or otherwise safe confinement is not possible prior to the Court hearing, it will be handled as provided in Section 4-78.

#### Sec. 4-78. - Custody of certain animals.

Any public health officer, law enforcement officer, animal control officer, licensed veterinarian, or any officer or agent of a duly incorporated humane society may take into custody any animal suspected of being kept, harbored or owned in violation of this article. When such person takes custody of such animal, the animal may be placed in the care of a duly incorporated humane society or a licensed veterinarian for boarding, treatment or such other care deemed necessary, at the expense of the owner, keeper or harborer.

#### Sec. 4-79. - Disposition of certain animals.

Any animal kept in violation of this article may be ordered by the Court to be destroyed in a humane manner when, in the Court's judgment, such animal represents a continuing threat of serious harm to human beings or other animals. If the Court does not order destruction of the animal, the Court shall allow the owner, keeper or harbinger thereof no more than forty-eight (48) hours to remove the animal from the City. Failure to remove such animal within the time allowed by the Court shall constitute a separate violation of this article.

Sec. 4-80. - Penalty.

Any person violating any provision of this article shall upon conviction thereof, be punished by a fine of not more than five hundred dollars (\$500.00).

Secs. 4-81—4-105. - Reserved.



## ARTICLE IV. - CRUELTY TO ANIMALS PROHIBITED<sup>[2]</sup>

### Sec. 4-106. - Care of animal.

It shall be unlawful for any owner, keeper or harbinger of any animal to fail to provide such animal with sufficient food and water, shelter and protection from the weather, veterinary care as needed, or to otherwise fail to provide humane care and treatment.

### Sec. 4-107. - Cruelty.

No person shall beat, torment, overload, overwork, or otherwise ill-treat or abuse any animal as more specifically set forth in the currently adopted Uniform Public Offense Code.

### Sec. 4-108. - Abandonment.

No owner, keeper or harbinger of any animal shall cause it to be abandoned in the City.

### Sec. 4-109. - Intentional destruction or injury.

No person shall intentionally injure, destroy or kill any animal unless such animal is an immediate threat to the physical safety of such person or other persons or for the purpose of preventing or alleviating the suffering of a sick or injured animal; provided that nothing in this article shall prohibit the disposition of any animal in a humane manner as provided in this chapter.

### Sec. 4-110. - Enforcement.

In the event the Animal Control Officer or any other law enforcement officer has probable cause to believe that any owner, keeper, harbinger or other person is mistreating any animal within the City limits as set forth in this article, such officer may enter upon private property to investigate the matter in order to make a proper determination, and if in the opinion of the officer, such animal is being mistreated, said officer shall file a complaint in the Municipal Court and may seize said animal for emergency treatment and/or care.

### Sec. 4-111. - Complaint.

Whenever a sworn complaint is filed in the Municipal Court by the Animal Control Officer or other law enforcement officer against the owner of an animal claiming that the animal has been treated cruelly, abandoned or intentionally destroyed or injured and in violation of this article, the Municipal Judge shall hold a hearing to determine whether or not the animal has been treated cruelly, abandoned or intentionally destroyed or injured within the meaning of this article and thereby in violation of this article as follows:

- (1) *Hearing* . The owner of the animal shall be notified in writing of the time and place of the hearing at least ten (10) days prior to the hearing. In making a determination, the Municipal Judge shall consider the following:
  - a. The seriousness of the treatment.
  - b. Past history of treatment.
  - c. Likelihood of insufficient treatment in the future.
  - d. The condition and circumstances under which the animal is kept or confined.
  - e. The circumstances surrounding the treatment.
  - f. Other factors which may reasonably relate to the determination of whether or not the animal has been treated cruelly, abandoned or intentionally destroyed or injured.
- (2) *Outcome*. The Municipal Judge may order the permanent removal of the animal from the custody of the owner, keeper or harbinger. In such case, the animal will be placed

with an animal shelter. If permanent removal is not ordered, the animal shall be returned to the owner, keeper or harborer.

Sec. 4-112. - Financial responsibility. Sec. 4-113. - Penalty. In addition to the financial responsibility provided in this article, any person violating any provision of this article shall, upon conviction thereof, be punished by a fine of not more than five hundred dollars (\$500.00).

In the event any owner, keeper or harborer or other person shall be found to be in violation of any of the provisions of this article, any financial liability incurred for the treatment and care of such animal shall be the personal responsibility of such owner, keeper, harborer or person. In the event such owner, keeper, harborer or person is a minor, the parent or legal guardian of such minor shall be financially responsible for such treatment and care.

Sec. 4-113. - Penalty.

In addition to the financial responsibility provided in this article, any person violating any provision of this article shall, upon conviction thereof, be punished by a fine of not more than five hundred dollars (\$500.00).

**SECTION 2.** That existing Chapter 4 of the Code of the City of Fairway, Kansas is hereby repealed.

**SECTION 3.** That this Ordinance shall become effective upon adoption and publication of its summary in the official City newspaper.

**PASSED** by the City Council this \_\_\_\_ day of \_\_\_\_\_, 2019. **APPROVED** by the Mayor.

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Melanie Hepperly, Mayor

ATTEST:

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Kim Young, City Clerk

APPROVED AS TO FORM:

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Stephen P. Chinn, City Attorney