

Passed: October 10, 2006
Published: October 25, 2006

Ordinance No. 1863

AN ORDINANCE REGULATING THE KEEPING OF DANGEROUS OR VICIOUS ANIMALS WITHIN THE CITY; AND REPEALING SECTIONS 6.04.180, 6.20.010, 6.20.020, 6.20.030, AND 6.20.040 OF THE DERBY MUNICIPAL CODE.

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

Section 1. Definitions.

As used in this ordinance:

(a) "Animals" means all vertebrate and invertebrate animals such as, but not limited to, animals, cats, bovine cattle, horses and other equines, hogs, goats, 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.

(b) "Attack" means violent or aggressive physical contact with a person or domestic animal or violent or aggressive behavior that confines the movement of a person, including, but not limited to, cornering or circling a person.

(c) "Bite" or "Wound" 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 or wound.

(d) "Dangerous or vicious animal" means:

(1) Any animal which has exhibited a dangerous or vicious propensity toward persons or domestic animals and is capable of inflicting serious physical harm or death to humans and which would constitute a danger to human life or property; provided, that an animal shall not be determined to be dangerous or vicious under this subsection if the animal is being confined in a substantial enclosure to which members of the general public do not have access; or

(2) Any animal which, without provocation, attacks, bites or wounds, or has attacked, bitten or wounded, a human being or domestic animal provided, that an attack, bite or wound shall be considered to have been provoked if it occurs on the property of the animals owner and the victim was committing a willful trespass at the time; or

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

(e) "Fowl" means all animals that are included in the zoological class Aves.

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

(g) "Inhumane treatment" means any treatment to any animal which deprives the animal of necessary sustenance, including food, water and protection from the weather, or any treatment of any animal such as overloading, overworking, tormenting, beating, mutilating or teasing or other abnormal treatment.

(h) "License collector" means the duly appointed license collector of the city or his/her authorized representative, or the duly appointed treasurer of the city or his/her authorized representative.

(i) "Owner" means the person who harbors the animal and/or has a license to keep the animal.

(j) "Person" means any individual, firm, association, joint stock company, syndicate, partnership or corporation.

(k) "Picket" means attaching a leash, rope, chain, lead, tether or other similar apparatus or device to the body of an animal and another object for the purpose of confining the animal or limiting the movement of the animal.

(l) "Proper Enclosure" means an enclosure in which an animal is securely confined indoors or confined in a securely enclosed and locked pen or structure upon the premises of the owner of the animal, is structured of secure sides and a secure top attached to the sides, and in which a bottom is secured to the sides or, in lieu of a bottom being secured to the sides, the sides are embedded in the ground no less than one foot. All such pens or structures must be approved by the animal control officer and be adequately lighted and kept in a clean and sanitary condition.

(l) "Running at large" means any animal that is not confined within a fenced enclosure or shelter or under the control of a person, either by lead, cord, rope or chain; provided, that an animal may be considered confined if it is on a leash, rope or chain which is sufficient to keep the animal on the premises where picketed in accordance with this ordinance. For the purposes of this ordinance, an animal shall not be considered running at large when on the owner's property and confined by an operating electronic fencing system when the premises are clearly and prominently marked to show the existence of the electronic fencing system and the animal is equipped with the necessary and operating components of the system required to confine the animal to the owner's property.

(m) "Shelter" means all pens, houses or fenced enclosures where animals are confined, such as, but not limited to, hutches, cotes, lofts, kennels, warrens, feed lots, barns, stables, or other buildings or enclosures.

(n) "Veterinarian" means a doctor of veterinary medicine licensed by the state of Kansas.

(o) "Vicious propensity" means a known tendency or disposition to approach any individual or domestic animal in an attitude of attack when there is no provocation.

Section 2. Dangerous or vicious animal--determination--notice and hearing--confinement or destruction.

a. Upon the complaint of any person that an animal is dangerous or vicious, the municipal judge may, after written notice of time and place is given the owner of any animal which has exhibited characteristics of a dangerous or vicious animal as defined in this ordinance, hold a hearing to determine whether or not the animal is dangerous or vicious. At such hearing testimony may be offered by the owner of the animal, the animal control officer, representatives

of animal humane organizations, kennel clubs and veterinarians concerning the vicious propensity of the animal. In making a determination, the municipal judge shall consider the following:

- (1) The seriousness of any attack or wound;
- (2) The past history of bites or wounds inflicted by the animal;
- (3) The conditions existing when the animal inflicted the wound or wounds;
- (4) The potential propensity of the animal to inflict wounds in the future; and
- (5) The conditions under which the animal is kept and maintained.

(b) If the municipal judge determines that the animal is dangerous or vicious, he or she may order such animal picked up and cause such animal to be destroyed, or in lieu of such destructions he or she may permit the confinement of the animal in a manner and location that is deemed appropriate or as provided in section 2 hereof.

Section 3. Dangerous or vicious animal --failure to confine--destruction and defenses.

(a) It is unlawful for an owner of a dangerous or vicious animal to permit such animal to be outside a proper enclosure unless such animal is restrained by a substantial chain or leash and under physical restraint by a responsible person for the purpose of transportation to and from a veterinarian for medical treatment. In such event, the dangerous or vicious animal shall be securely muzzled and restrained with a chain or leash not exceeding four feet in length, and shall be under the direct control and supervision of the owner or keeper of the dangerous or vicious animal. The muzzle shall be made and used in a manner that will not cause injury to the animal or interfere with its vision or respiration, but shall prevent it from biting any human or animal.

(b) Should a dangerous or vicious animal, while running at large in violation of this section, attack or inflict injury upon any person, the municipal judge may, in addition to any other penalty provided by this ordinance, order the animal destroyed; provided, that the municipal judge may, at his or her discretion, consider whether the attack or injury was sustained by a person who, at the time, was committing a willful trespass or other tort upon the premises of the owner of the animal, or was tormenting, abusing, or assaulting the animal, or has, in the past, been observed or reported to have tormented, aroused, or assaulted the animal or was committing or attempting to commit a crime.

Section 4. Signs required.

The owner of a dangerous or vicious animal shall display in a prominent place at the entrance to his or her premises a clearly visible warning sign indicating there is a dangerous or vicious animal on the premises. A similar sign is required to be posted on the pen or kennel of the animal.

Section 5. Registration and insurance

(a) The owner or keeper of a dangerous or vicious animal shall annually register the dangerous or vicious animal with the police department on such forms designated by the animal control section, and shall have a microchip, traceable to the dangerous or vicious animal and owner of the animal, inserted into the animal by a licensed veterinarian. The owner or keeper

shall pay an annual registration fee of one hundred dollars to the city and shall pay all costs associated with the microchip procedure. The owner or keeper shall notify the police department in writing within seven days prior to any change in the address of the owner or keeper or the location of the dangerous or vicious animal.

(b) The owner or keeper of a dangerous or vicious animal required to be registered under this section shall maintain liability insurance in the amount of one hundred thousand dollars for each such animal against the potential damage liabilities and hazards associated with the ownership or possession of such animal. The owner or keeper shall file with the city clerk a certificate of insurance reflecting the required minimum insurance and naming the City of Derby as an additional insured.

Section 6. Interference with the duty of animal control officer.

It is unlawful for any person to:

(a) Refuse to identify himself or herself and provide verification of his or her correct name, address, date of birth and any other information reasonably necessary to correctly identify such person when asked to do so by the animal control officer when the animal control officer has probable cause to believe that this person has violated a section of this ordinance;

(b) Interfere with, molest, injure or prevent the animal control officer in the lawful discharge of his duties as herein prescribed.

Section 7. Animal bite or wound violations.

(a) No person who owns, possesses, harbors or exercises control over any animal shall do the following:

(1) Permit the animal to attack, bite or wound any person or domestic animal not on the premises of such owner, possessor or keeper;

(2) Permit the animal to attack, bite or wound any person or domestic animal upon the premises of the residence of such owner, possessor or keeper or upon the premises of any business establishment not then open to the public. It is an affirmative defense to this paragraph if such premises are previously posted at each entrance with a prominent and conspicuous sign warning all persons of the animal, and the animal is confined in a proper enclosure. It is also an affirmative defense to this paragraph that the attack, bite or wound by the animal was necessary to prevent or apprehend a person engaged in committing an act of violence, robbery or theft upon the property;

(3) Permit the animal to attack, bite or wound any person or domestic animal upon the premises of any business establishment that is open to the public. It is an affirmative defense to this paragraph that the attack, bite or wound by the animal was necessary to prevent or apprehend a person engaged in committing an act of violence, robbery or theft upon the property.

(b) For purposes of this section, the word "permit" shall mean allow or let happen. Knowledge or intention on the part of the person who owns, possesses, harbors or exercises control over the animal shall not be an element of this offense.

(c) The provisions of this section shall not apply to any law enforcement officer who uses an animal while engaged in law enforcement activities, nor to any owner, possessor or

keeper of any animal which attacks, bites or wounds a person engaged in physically attacking or striking such owner, possessor or keeper.

Section 8. Violation--Penalty.

(a) A person violating any provision of this ordinance is guilty of a misdemeanor and shall be punished by a fine of not more than five hundred dollars or by imprisonment of not more than six months or both such fine and imprisonment.

(b) Each day that any violation of this ordinance occurs shall constitute a separate offense and shall be punishable under this ordinance as a separate violation.

(c) In addition to the penalties enumerated in subsections (a) and (b) of this section, the judge of the municipal court may, upon a person's third conviction of section hereof involving the same animal, order such person's license to keep said animal revoked.

SECTION 9. This ordinance shall be in force from and after its passage and publication in the official City newspaper.

PASSED BY THE GOVERNING BODY this 10th day of October, 2006.



Dion P. Avello, Mayor

ATTEST:



Jean Epperson, City Clerk